

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2806

Introduced by
Representatives Boone, Crandall, Mason, Senator Blendu: Representatives
Adams, Anderson, Barnes, Barto, Bradley, Burns J, Chabin, Clark, Driggs,
Hershberger, Kavanagh, Konopnicki, Lopes, Lujan, McClure, McComish,
McLain, Meza, Murphy, Nelson, Nichols, Pearce, Robson, Stump, Tobin,
Weiers J, Weiers JP, Yarbrough, Senators Flake, Verschoor

AN ACT

AMENDING SECTION 6-246, ARIZONA REVISED STATUTES; REPEALING SECTION 14-1108, ARIZONA REVISED STATUTES; AMENDING SECTIONS 14-1201 AND 14-1403, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-1404, 14-1405, 14-1406, 14-1407 AND 14-1408; AMENDING SECTIONS 14-2901, 14-2905, 14-3703, 14-3913, 14-3933, 14-5417, 14-5419 AND 14-5603, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5652; REPEALING TITLE 14, CHAPTER 7, ARTICLES 2, 2.1, 3, 6 AND 8, ARIZONA REVISED STATUTES; AMENDING TITLE 14, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 11; AMENDING SECTION 46-456, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA TRUST CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-246, Arizona Revised Statutes, is amended to
3 read:

4 6-246. Permitted investments; limitations

5 A. In addition to other investments authorized by law, a bank or trust
6 company that is acting as a fiduciary may invest and reinvest in the
7 securities of an open-end or closed-end management investment company or
8 investment trust that is registered under the investment company act of 1940
9 (15 United States Code section 80A-1), as amended, if the portfolios of that
10 investment company or investment trust consist of investments permitted by
11 the applicable fiduciary instrument. A bank or trust company may invest in
12 these securities notwithstanding that the bank or trust company, or an
13 affiliate of the bank or trust company, provides services to the investment
14 company or investment trust as an investment adviser, custodian, transfer
15 agent, registrar, sponsor, distributor, administrator, manager or otherwise
16 and receives reasonable remuneration for those services.

17 B. A bank or trust company that invests and reinvests in the
18 securities of an open-end or closed-end management investment company or
19 investment trust authorized under subsection A of this section shall disclose
20 in the statement of the fiduciary account to all persons whose funds are
21 invested in the investment company or investment trust that the bank or trust
22 company provides services for and receives fees from the open-end or
23 closed-end management company or investment trust. A PERSON WHO COMPLIES
24 WITH THE REQUIREMENTS OF SECTION 14-10802, SUBSECTION F SATISFIES THE
25 DISCLOSURE REQUIREMENTS OF THIS SUBSECTION.

26 C. A bank may purchase for its own account any class of equity
27 securities issued by a banker's bank, as defined in section 6-204, if the
28 aggregate investment does not exceed ten per cent of the bank's capital.

29 Sec. 2. Repeal

30 Section 14-1108, Arizona Revised Statutes, is repealed.

31 Sec. 3. Section 14-1201, Arizona Revised Statutes, is amended to read:

32 14-1201. Definitions

33 In this title, unless the context otherwise requires:

34 1. "Agent" includes an attorney-in-fact under a durable or nondurable
35 power of attorney, a person who is authorized to make decisions concerning
36 another person's health care and a person who is authorized to make decisions
37 for another person under a natural death act.

38 2. "Application" means a written request to the registrar for an order
39 of informal probate or appointment under chapter 3, article 3 of this title.

40 3. "Beneficiary", as it relates to a trust beneficiary, includes a
41 person who has any present or future interest, vested or contingent, and also
42 includes the owner of an interest by assignment or other transfer. As it
43 relates to a charitable trust, beneficiary includes any person entitled to
44 enforce the trust. As it relates to a beneficiary of a beneficiary
45 designation, beneficiary refers to a beneficiary of an insurance or annuity

1 policy, an account with pay on death designation, a security registered in
2 beneficiary form or a pension, profit sharing, retirement or similar benefit
3 plan, or any other nonprobate transfer at death. As it relates to a
4 beneficiary designated in a governing instrument, beneficiary includes a
5 grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a
6 beneficiary designation, a donee, appointee or taker in default of a power of
7 appointment and a person in whose favor a power of attorney or a power held
8 in any person, fiduciary or representative capacity is exercised.

9 4. "Beneficiary designation" refers to a governing instrument naming a
10 beneficiary of an insurance or annuity policy, of an account with pay on
11 death designation, of a security registered in beneficiary form or of a
12 pension, profit sharing, retirement or similar benefit plan, or any other
13 nonprobate transfer at death.

14 5. "Child" includes a person who is entitled to take as a child under
15 this title by intestate succession from the parent whose relationship is
16 involved. Child excludes a person who is only a stepchild, a foster child,
17 a grandchild or a more remote descendant.

18 6. "Claims", in respect to estates of decedents and protected persons,
19 includes liabilities of the decedent or the protected person, whether arising
20 in contract, in tort or otherwise, and liabilities of the estate that arise
21 at or after the death of the decedent or after the appointment of a
22 conservator, including funeral expenses and expenses of administration.
23 Claims ~~does~~ DO not include estate or inheritance taxes or demands or disputes
24 regarding title of a decedent or a protected person to specific assets
25 alleged to be included in the estate.

26 7. "Community property" means that property of a husband and wife that
27 is acquired during the marriage and that is community property as prescribed
28 in section 25-211.

29 8. "Conservator" means a person who is appointed by a court to manage
30 the estate of a protected person.

31 9. "Court" means the superior court.

32 10. "Dependent child" means a minor child who the decedent was
33 obligated to support or an adult child who was in fact being supported by the
34 decedent at the time of the decedent's death.

35 11. "Descendant" means all of the decedent's descendants of all
36 generations, with the relationship of parent and child at each generation.

37 12. "Devise", when used as a noun, means a testamentary disposition of
38 real or personal property and, when used as a verb, means to dispose of real
39 or personal property by will.

40 13. "Devisee" means a person designated in a will to receive a devise.
41 For the purposes of chapter 3 of this title, in the case of a devise to an
42 existing trust or trustee, or to a trustee on trust described by will, the
43 trust or trustee is the devisee and the beneficiaries are not devisees.

44 14. "Disability" means cause for a protective order as described in
45 section 14-5401.

15. "Distributee" means any person who has received property of a decedent from that person's personal representative other than as a creditor or purchaser. Distributee includes a testamentary trustee only to the extent of distributed assets or increment that remains in that person's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this paragraph, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

16. "Estate" includes the property of the decedent, trust or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration. As it relates to a spouse, the estate includes only the separate property and the share of the community property belonging to the decedent or person whose affairs are subject to this title.

17. "Exempt property" means that property of a decedent's estate that is described in section 14-2403.

18. "Fiduciary" includes a personal representative, guardian, conservator and trustee.

19. "Foreign personal representative" means a personal representative appointed by another jurisdiction.

20. "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

21. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with pay on death designation, security registered in beneficiary form, pension, profit sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney or a dispositive, appointive or nominative instrument of any similar type.

22. "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes a person who is merely a guardian ad litem.

23. "Heirs", except as controlled by section 14-2711, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

24. "Incapacitated person" has the same meaning ~~as~~ prescribed in section 14-5101.

25. "Informal proceedings" means those proceedings conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

26. "Interested person" includes any TRUSTEE, heir, devisee, child, spouse, creditor, beneficiary and other person who has a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. Interested person also includes a person who has priority for appointment as personal representative and other fiduciaries representing

1 interested persons. Interested person, as the term relates to particular
2 persons, may vary from time to time and must be determined according to the
3 particular purposes of, and matter involved in, any proceeding.

4 27. "Issue" of a person means descendant as defined in ~~paragraph 11 of~~
5 this section.

6 28. "Joint tenants with the right of survivorship" and "community
7 property with the right of survivorship" includes co-owners of property held
8 under circumstances that entitle one or more to the whole of the property on
9 the death of the other or others but excludes forms of co-ownership
10 registration in which the underlying ownership of each party is in proportion
11 to that party's contribution.

12 29. "Lease" includes any oil, gas or other mineral lease.

13 30. "Letters" includes letters testamentary, letters of guardianship,
14 letters of administration and letters of conservatorship.

15 31. "Minor" means a person who is under eighteen years of age.

16 32. "Mortgage" means any conveyance, agreement or arrangement in which
17 property is encumbered or used as security. **MORTGAGE DOES NOT INCLUDE LEASES**
18 **OR EASEMENTS.**

19 33. "Nonresident decedent" means a decedent who was domiciled in
20 another jurisdiction at the time of the decedent's death.

21 34. "Organization" means a corporation, **LIMITED LIABILITY COMPANY,**
22 business trust, estate, trust, partnership, joint venture, association,
23 government or governmental subdivision or agency or any other legal or
24 commercial entity.

25 35. "Parent" includes any person entitled to take, or who would be
26 entitled to take if the child died without a will, as a parent under this
27 title by intestate succession from the child whose relationship is in
28 question and excludes any person who is only a stepparent, foster parent or
29 grandparent.

30 36. "Payor" means a trustee, insurer, business entity, employer,
31 government, governmental agency or subdivision or any other person who is
32 authorized or obligated by law or a governing instrument to make payments.

33 37. "Person" means a person or an organization.

34 38. "Personal representative" includes executor, administrator,
35 successor personal representative, special administrator and persons who
36 perform substantially the same function under the law governing their status.
37 A general personal representative excludes a special administrator.

38 39. "Petition" means a written request to the court for an order after
39 notice.

40 40. "Proceeding" includes action at law and suit in equity.

41 41. "Property" ~~includes both real and personal property or any interest~~
42 ~~in real and personal property and means anything that may be the subject of~~
43 ~~ownership.~~ **HAS THE SAME MEANING PRESCRIBED IN SECTION 14-10103.**

44 42. "Protected person" has the same meaning ~~as~~ prescribed in section
45 14-5101.

1 43. "Protective proceeding" has the same meaning ~~as~~ prescribed in
2 section 14-5101.

3 44. "Registrar" means the official of the court designated to perform
4 the functions of registrar as provided in section 14-1307.

5 45. "Security" includes any note, stock, treasury stock, bond,
6 debenture, evidence of indebtedness, certificate of interest or participation
7 in an oil, gas or mining title or lease or in payments out of production
8 under that title or lease, collateral trust certificate, transferable share,
9 ~~OR~~ voting trust certificate and, in general, includes any interest or
10 instrument commonly known as a security, or any certificate of interest or
11 participation, any temporary or interim certificate, receipt or certificate
12 of deposit for, or any warrant or right to subscribe to or purchase, any of
13 these securities.

14 46. "Separate property" means that property of a husband or wife ~~which~~
15 ~~THAT~~ is ~~his or her~~ ~~THE SPOUSE'S~~ separate property as defined in section
16 25-213.

17 47. "Settlement", in reference to a decedent's estate, includes the
18 full process of administration, distribution and closing.

19 48. "Special administrator" means a personal representative as
20 described by sections 14-3614 through 14-3618.

21 49. "State" ~~means a state, district, territory, possession or~~
22 ~~commonwealth of the United States~~ ~~HAS THE SAME MEANING PRESCRIBED IN SECTION~~
23 ~~14-10103.~~

24 50. "Successor personal representative" means a personal
25 representative, other than a special administrator, who is appointed to
26 succeed a previously appointed personal representative.

27 51. "Successors" means persons, other than creditors, who are entitled
28 to property of a decedent under a will or this title.

29 52. "Supervised administration" refers to the proceedings described in
30 chapter 3, article 5 of this title.

31 53. "Survive" means that a person has neither predeceased an event,
32 including the death of another person, nor is deemed to have predeceased an
33 event under section 14-2104 or 14-2702.

34 54. "Testacy proceeding" means a proceeding to establish a will or
35 determine intestacy.

36 55. "Testator" includes a person of either sex.

37 56. "Trust" includes an express trust, private or charitable, with any
38 additions, wherever and however created. Trust also includes a trust created
39 or determined by judgment or decree under which the trust is to be
40 administered in the manner of an express trust. Trust excludes other
41 constructive trusts and excludes resulting trusts, conservatorship, personal
42 representatives, trust accounts, custodial arrangements pursuant to chapter
43 7, article 7 of this title, business trusts providing for certificates to be
44 issued to beneficiaries, common trust funds, voting trusts, security
45 arrangements, liquidation trusts and trusts for the primary purpose of paying

debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

57. "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by court.

58. "Ward" has the same meaning ~~as~~ prescribed in section 14-5101.

59. "Will" includes A codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Sec. 4. Section 14-1403, Arizona Revised Statutes, is amended to read: 14-1403. Pleadings

In formal proceedings involving trusts or estates of decedents, minors, protected persons or incapacitated persons, ~~and in judicially supervised settlements, the following apply:~~

~~1. interests to be affected shall~~ **MUST** be described in pleadings ~~which~~ **THAT** give reasonable information to owners by name or class, by reference to the instrument creating the interests or in **SOME** other appropriate manner.

~~2. Persons are bound by orders binding others in the following cases:~~
~~(a) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, as objects, takers in default or otherwise, are subject to the power.~~

~~(b) To the extent there is no conflict of interest between them or among persons represented:~~

~~(i) Orders binding a conservator bind the person whose estate he controls.~~

~~(ii) Orders binding a guardian bind the ward if no conservator of his estate has been appointed.~~

~~(iii) Orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties.~~

~~(iv) Orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child.~~

~~(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.~~

~~3. Notice is required as follows:~~

~~(a) Notice as prescribed by section 14-1401 shall be given to every interested person or to one who can bind an interested person as described in~~

~~paragraph 2, subdivision (a) or (b) of this section. Notice may be given both to a person and to another who may bind him.~~

~~(b) Notice is given to unborn or unascertained persons who are not represented under paragraph 2, subdivision (a) or (b) of this section, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.~~

~~4. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.~~

Sec. 5. Title 14, chapter 1, article 4, Arizona Revised Statutes, is amended by adding sections 14-1404 through 14-1408, to read:

14-1404. Representation; basic effect

A. NOTICE TO A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON UNDER THIS ARTICLE HAS THE SAME EFFECT AS IF NOTICE WERE GIVEN DIRECTLY TO THE OTHER PERSON.

B. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14-10602, SUBSECTION E, A PERSON WHO UNDER THIS ARTICLE MAY REPRESENT A SETTLOR WHO LACKS CAPACITY MAY RECEIVE NOTICE AND GIVE A BINDING CONSENT ON THE SETTLOR'S BEHALF. THE CONSENT OF A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON UNDER THIS ARTICLE IS BINDING ON THE PERSON REPRESENTED UNLESS THE PERSON REPRESENTED OBJECTS TO THE REPRESENTATION BEFORE THE CONSENT WOULD OTHERWISE HAVE BECOME EFFECTIVE.

C. FOR THE PURPOSES OF THIS SECTION, NOTICE TO A PERSON MUST INCLUDE ANY DOCUMENT REQUIRED TO BE SENT TO A PERSON PURSUANT TO THIS ARTICLE.

D. A PERSON WHO RECEIVES NOTICE ON BEHALF OF ANOTHER PERSON PURSUANT TO THIS SECTION IS NOT LIABLE TO THE OTHER PERSON UNLESS THE PERSON WHO RECEIVES NOTICE IS GROSSLY NEGLIGENT OR ACTS OR FAILS TO ACT WITH THE INTENT TO HARM THE OTHER PERSON.

14-1405. Representation by holder of general power of appointment

THE HOLDER OF A GENERAL POWER OF APPOINTMENT, INCLUDING A GENERAL TESTAMENTARY POWER OF APPOINTMENT, MAY REPRESENT AND BIND PERSONS WHOSE INTERESTS, AS PERMISSIBLE APPOINTEES, TAKERS IN DEFAULT OR OTHERWISE, ARE SUBJECT TO THE POWER.

14-1406. Representation by fiduciaries and parents

TO THE EXTENT THERE IS NO MATERIAL CONFLICT OF INTEREST BETWEEN THE REPRESENTATIVE AND THE PERSON REPRESENTED OR AMONG THOSE BEING REPRESENTED WITH RESPECT TO A PARTICULAR QUESTION OR DISPUTE:

1. A CONSERVATOR MAY REPRESENT AND BIND THE ESTATE THAT THE CONSERVATOR CONTROLS.

1 2. A GUARDIAN MAY REPRESENT AND BIND THE WARD IF A CONSERVATOR OF THE
2 WARD'S ESTATE HAS NOT BEEN APPOINTED.

3 3. AN AGENT WHO HAS AUTHORITY TO ACT WITH RESPECT TO THE PARTICULAR
4 QUESTION OR DISPUTE MAY REPRESENT AND BIND THE PRINCIPAL.

5 4. A TRUSTEE MAY REPRESENT AND BIND THE BENEFICIARIES OF THE TRUST.

6 5. A PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE MAY REPRESENT AND
7 BIND PERSONS INTERESTED IN THE ESTATE.

8 6. A PARENT MAY REPRESENT AND BIND THE PARENT'S MINOR OR UNBORN CHILD
9 IF A CONSERVATOR OR GUARDIAN FOR THE CHILD HAS NOT BEEN APPOINTED, EXCEPT
10 THAT THE PARENT MAY NOT REPRESENT THE CHILD TO CONSENT TO A MODIFICATION OR A
11 TERMINATION OF A TRUST IF THE PARENT IS THE SETTLOR OF THE TRUST.

12 14-1407. Representation by person having substantially
13 identical interest

14 UNLESS OTHERWISE REPRESENTED, A MINOR, INCAPACITATED PERSON, UNBORN
15 CHILD OR PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN AND NOT REASONABLY
16 ASCERTAINABLE MAY BE REPRESENTED BY AND BOUND BY ANOTHER PERSON WHO HAS A
17 SUBSTANTIALLY IDENTICAL INTEREST WITH RESPECT TO THE PARTICULAR QUESTION OR
18 DISPUTE, BUT ONLY TO THE EXTENT THERE IS NO MATERIAL CONFLICT OF INTEREST
19 BETWEEN THE REPRESENTATIVE AND THE PERSON REPRESENTED WITH RESPECT TO THE
20 PARTICULAR QUESTION OR DISPUTE.

21 14-1408. Appointment of representative

22 A. IF THE COURT DETERMINES THAT AN INTEREST IS NOT REPRESENTED UNDER
23 THIS ARTICLE OR THAT THE OTHERWISE AVAILABLE REPRESENTATION MIGHT BE
24 INADEQUATE, THE COURT MAY APPOINT A REPRESENTATIVE TO RECEIVE NOTICE, GIVE
25 CONSENT AND OTHERWISE REPRESENT, BIND AND ACT ON BEHALF OF A MINOR,
26 INCAPACITATED PERSON, UNBORN CHILD OR PERSON WHOSE IDENTITY OR LOCATION IS
27 UNKNOWN. THE COURT MAY APPOINT A REPRESENTATIVE FOR SEVERAL PERSONS OR
28 INTERESTS.

29 B. A REPRESENTATIVE MAY ACT ON BEHALF OF THE PERSON REPRESENTED WITH
30 RESPECT TO ANY MATTER ARISING UNDER THIS TITLE, WHETHER OR NOT A JUDICIAL
31 PROCEEDING CONCERNING THE TRUST OR ESTATE IS PENDING.

32 C. IN MAKING DECISIONS, A REPRESENTATIVE MAY CONSIDER GENERAL BENEFIT
33 ACCRUING TO THE LIVING MEMBERS OF THE FAMILY OF THE PERSON REPRESENTED.

34 Sec. 6. Section 14-2901, Arizona Revised Statutes, is amended to read:

35 14-2901. Nonvested property interest; general power of
36 appointment; validity; exception

37 A. A nonvested property interest is invalid unless at least one of the
38 following is true:

39 1. At the time the interest is created it is certain to vest or to
40 terminate not later than twenty-one years after the death of a person who is
41 then alive.

42 2. The interest either vests or terminates within ~~ninety~~ FIVE HUNDRED
43 years after its creation.

1 3. The interest is under a trust whose trustee has the expressed or
2 implied power to sell the trust assets and at one or more times after the
3 creation of the interest one or more persons who are living when the trust is
4 created have an unlimited power to terminate the interest.

5 B. A general power of appointment that is not presently exercisable
6 because of a condition precedent is invalid unless ANY the following is true:

7 1. At the time the power is created the condition precedent is certain
8 to be satisfied or becomes impossible to satisfy no later than twenty-one
9 years after the death of a person who is then alive.

10 2. The condition precedent either is satisfied or becomes impossible
11 to satisfy within ~~ninety~~ FIVE HUNDRED years after its creation.

12 3. THE POWER IS WITH RESPECT TO AN INTEREST UNDER A TRUST WHOSE
13 TRUSTEE HAS THE EXPRESSED OR IMPLIED POWER TO SELL THE TRUST ASSETS AND AT
14 ONE OR MORE TIMES AFTER THE CREATION OF THE INTEREST ONE OR MORE PERSONS WHO
15 ARE LIVING WHEN THE TRUST IS CREATED HAVE AN UNLIMITED POWER TO TERMINATE THE
16 INTEREST.

17 C. A nongeneral power of appointment or a general testamentary power
18 of appointment is invalid unless AT LEAST ONE OF THE FOLLOWING IS TRUE:

19 1. At the time the power is created it is certain to be irrevocably
20 exercised or otherwise to terminate not later than twenty-one years after the
21 death of a person who is then alive.

22 2. The power is irrevocably exercised or otherwise terminates within
23 ~~ninety~~ FIVE HUNDRED years after its creation.

24 3. THE POWER IS WITH RESPECT TO AN INTEREST UNDER A TRUST WHOSE
25 TRUSTEE HAS THE EXPRESSED OR IMPLIED POWER TO SELL THE TRUST ASSETS AND AT
26 ONE OR MORE TIMES AFTER THE CREATION OF THE INTEREST ONE OR MORE PERSONS WHO
27 ARE LIVING WHEN THE TRUST IS CREATED HAVE AN UNLIMITED POWER TO TERMINATE THE
28 INTEREST.

29 D. In determining whether a nonvested property interest or a power of
30 appointment is valid under subsection A, paragraph 1, subsection B, paragraph
31 1 or subsection C, paragraph 1, the possibility that a child will be born to
32 a person after that person's death is disregarded.

33 E. If the governing ~~instrument's language~~ INSTRUMENT seeks to do
34 either of the following ~~on the later of either the expiration of a period of~~
35 ~~time that does not exceed twenty-one years after the death of the survivor of~~
36 ~~a specific person who was alive when the trust or other property arrangement~~
37 ~~was created or the expiration of a period of time that exceeds or might~~
38 ~~exceed twenty-one years after the death of the survivor of a specific person~~
39 ~~who was alive when that trust or other property arrangement was created, that~~
40 ~~language is inoperative to the extent that it produces a period of time that~~
41 ~~exceeds twenty-one years after the death of the survivor~~ AFTER THE EXPIRATION
42 OF THE LATEST PERIOD DESCRIBED BY SUBSECTION A, B OR C, THAT LANGUAGE IS IN
43 OPERATIVE TO THE EXTENT IT PRODUCES A PERIOD OF TIME THAT EXCEEDS FIVE
44 HUNDRED YEARS AFTER THE CREATION OF THE TRUST:

1 1. Disallow the vesting or termination of an interest or trust beyond
2 that time.

3 2. Postpone the vesting or termination of an interest or trust until
4 that time.

5 Sec. 7. Section 14-2905, Arizona Revised Statutes, is amended to read:

6 14-2905. Nonvested property interest or power of appointment;
7 creation; effective date; judicial reformation

8 A. Except as otherwise provided, this article applies to a nonvested
9 property interest or a power of appointment that is created on or after
10 December 31, 1994.

11 B. If a nonvested property interest or a power of appointment ~~was~~
12 ~~created before December 31, 1994 and~~ is determined in a judicial
13 proceeding, ~~commenced on or after December 31, 1994,~~ to violate this state's
14 rule against perpetuities as that rule existed ~~before December 31, 1994~~ **WHEN**
15 **THE NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT WAS CREATED**, a court
16 on the petition of an interested person may reform the disposition in the
17 manner that most closely approximates the transferor's manifested plan of
18 distribution and that is within the limits of the ~~rule against perpetuities~~
19 ~~applicable when the nonvested property interest or power of appointment was~~
20 ~~created~~ **REQUIREMENTS OF SECTION 14-2901.**

21 C. For purposes of this ~~section~~ **ARTICLE**, a nonvested property interest
22 or a power of appointment created by the exercise of a power of appointment
23 is created when the power is irrevocably exercised or when a revocable
24 exercise becomes irrevocable.

25 Sec. 8. Section 14-3703, Arizona Revised Statutes, is amended to read:

26 14-3703. General duties: relation and liability to persons
27 interested in estate; standing to sue

28 A. **EXCEPT AS PROVIDED IN THE WILL OF THE DECEDENT**, a personal
29 representative is a fiduciary who shall observe the standards of care
30 applicable to trustees as described by ~~section 14-7302~~ **SECTIONS 14-10804 AND**
31 **14-10806** and the duties of accounting applicable to trustees as provided in
32 section ~~14-7303~~ **14-10813, SUBSECTION C.** A personal representative is under a
33 duty to settle and distribute the estate of the decedent in accordance with
34 the terms of any probated and effective will and this title, and as
35 expeditiously and efficiently as is consistent with the best interests of the
36 estate. The personal representative shall use the authority conferred by
37 this title, the terms of the will, if any, and any order in proceedings to
38 which the personal representative is a party for the best interests of
39 successors to the estate.

40 B. A personal representative shall not be surcharged for acts of
41 administration or distribution if the conduct in question was authorized at
42 the time. Subject to other obligations of administration, an informally
43 probated will is authority to administer and distribute the estate according
44 to its terms. An order of appointment of a personal representative, whether
45 issued in informal or formal proceedings, is authority to distribute

1 apparently intestate assets to the heirs of the decedent if, at the time of
 2 distribution, the personal representative is not aware of a pending testacy
 3 proceeding, a proceeding to vacate an order entered in an earlier testacy
 4 proceeding, a formal proceeding questioning the personal representative's
 5 appointment or fitness to continue, or a supervised administration
 6 proceeding. Nothing in this section affects the duty of the personal
 7 representative to administer and distribute the estate in accordance with the
 8 rights of claimants, the surviving spouse, any minor children, any dependent
 9 children and any pretermitted child of the decedent as described elsewhere in
 10 this title.

11 C. Except as to proceedings ~~which~~ THAT do not survive the death of the
 12 decedent, a personal representative of a decedent domiciled in this state at
 13 death has the same standing to sue and be sued in the courts of this state
 14 and the courts of any other jurisdiction as the decedent had immediately
 15 prior to death.

16 Sec. 9. Section 14-3913, Arizona Revised Statutes, is amended to read:

17 14-3913. Distributions to trustee

18 A. Before distributing to a trustee, the personal representative may
 19 require that the trustee inform the beneficiaries as provided in section
 20 ~~14-7303~~ 14-10813, SUBSECTION B, PARAGRAPH 3, and if the state in which it is
 21 to be administered provides for registration, that the trust be registered.

22 B. If the trust instrument does not excuse the trustee from giving
 23 bond, the personal representative may petition the appropriate court to
 24 require that the trustee post bond if ~~he~~ THE PERSONAL REPRESENTATIVE
 25 apprehends that distribution might jeopardize the interests of persons who
 26 are not able to protect themselves, and ~~he~~ THE PERSONAL REPRESENTATIVE may
 27 withhold distribution until the court has acted.

28 C. ~~No~~ AN inference of negligence on the part of the personal
 29 representative shall NOT be drawn from ~~his~~ THE PERSONAL REPRESENTATIVE'S
 30 failure to exercise the authority conferred by subsections A and B of this
 31 section.

32 Sec. 10. Section 14-3933, Arizona Revised Statutes, is amended to
 33 read:

34 14-3933. Closing estates; statement of personal representative

35 A. Unless prohibited by order of the court and except for estates
 36 being administered in supervised administration proceedings, a personal
 37 representative may close an estate by filing with the court no earlier than
 38 four months after the date of original appointment of a general personal
 39 representative for the estate a verified statement stating that the personal
 40 representative, or a previous personal representative has:

41 1. Determined that the time limit for presentation of creditors'
 42 claims has expired.

43 2. Fully administered the estate of the decedent by making payment,
 44 settlement or other disposition of all claims that were presented, expenses
 45 of administration and estate, inheritance and other death taxes, except as

1 specified in the statement, and that the assets of the estate have been
 2 distributed to the persons entitled. If any claims remain undischarged, the
 3 statement shall state whether the personal representative has distributed the
 4 estate subject to possible liability with the agreement of the distributees
 5 or it shall state in detail other arrangements ~~which~~ THAT have been made to
 6 accommodate outstanding liabilities.

7 3. Sent a copy of the statement to all distributees of the estate and
 8 to all creditors or other claimants of whom the personal representative is
 9 aware whose claims are neither paid nor barred and has furnished a full
 10 account in writing of the personal representative's administration to the
 11 distributees whose interests are affected thereby, ~~including guardians ad~~
 12 ~~litem appointed pursuant to section 14-1403, paragraph 4, conservators and~~
 13 ~~guardians.~~

14 B. If no proceedings involving the personal representative are pending
 15 in the court one year after the closing statement is filed, the appointment
 16 of the personal representative terminates.

17 Sec. 11. Section 14-5417, Arizona Revised Statutes, is amended to
 18 read:

19 14-5417. General duty of conservator

20 In ~~the exercise of his~~ EXERCISING powers, a conservator is to act as a
 21 fiduciary and shall observe the standard of care applicable to trustees as
 22 described by ~~section 14-7302~~ SECTIONS 14-10804 AND 14-10806.

23 Sec. 12. Section 14-5419, Arizona Revised Statutes, is amended to
 24 read:

25 14-5419. Accounts

26 A. Every conservator must account to the court for the administration
 27 of the estate not less than annually on the anniversary date of qualifying as
 28 conservator and also on resignation or removal, and on termination of the
 29 protected person's minority or disability, except that for good cause shown
 30 ~~upon~~ ON the application of an interested person, the court may relieve the
 31 conservator of filing annual or other accounts by an order entered in the
 32 minutes.

33 B. The court may take ~~such action as is~~ ANY appropriate ~~upon~~ ACTION ON
 34 filing of annual or other accounts. In connection with any account, the
 35 court may require a conservator to submit to a physical check of the estate
 36 in the conservator's control, to be made in any manner the court may specify.

37 C. An adjudication allowing an intermediate or final account can be
 38 made only ~~upon~~ ON petition, notice and a hearing. Notice must be given to:

39 1. The protected person.

40 2. A guardian of the protected person if one has been appointed,
 41 unless the same person is serving as both guardian and conservator.

42 3. If no guardian has been appointed or the same person is serving as
 43 both guardian and conservator, a spouse or, if the spouse is the conservator,
 44 there ~~be~~ IS no spouse or the spouse is incapacitated, a parent or an adult
 45 child who is not serving as a conservator.

1 4. A ~~guardian ad litem~~ REPRESENTATIVE appointed for the protected
 2 person, if the court determines in accordance with section ~~14-1403~~ 14-1408
 3 that representation of the interest of the protected person would otherwise
 4 be inadequate.

5 D. An order, made ~~upon~~ ON notice and a hearing, allowing an
 6 intermediate account of a conservator, adjudicates as to the conservator's
 7 liabilities concerning the matters considered in connection therewith. An
 8 order, made ~~upon~~ ON notice and a hearing, allowing a final account
 9 adjudicates as to all previously unsettled liabilities of the conservator to
 10 the protected person or the protected person's successors relating to the
 11 conservatorship.

12 E. In any case in which the estate consists, in whole or in part, of
 13 benefits paid by the veterans administration to the conservator or the
 14 conservator's predecessor for the benefit of the protected person, the
 15 veterans administration office ~~which~~ THAT has jurisdiction over the area is
 16 entitled to a copy of any account filed under chapter 5, article 4 of this
 17 title. Each year in which an account is not filed with the court, the
 18 conservator ~~shall~~, if requested, SHALL submit an account to the appropriate
 19 veterans administration office. If ~~such~~ an account is not submitted as
 20 requested, or if it is found unsatisfactory by the veterans administration,
 21 the court ~~shall, upon~~ ON receipt of notice ~~thereof~~, SHALL require the
 22 conservator ~~forthwith~~ to IMMEDIATELY file an account with the court.

23 Sec. 13. Section 14-5603, Arizona Revised Statutes, is amended to
 24 read:

25 14-5603. Deposit of funds; investment plan

26 A. All funds coming into the custody of the public fiduciary shall be
 27 deposited in the county treasury and disbursed at the direction of the public
 28 fiduciary or shall be deposited or invested in one or more insured banks or
 29 in one or more insured credit unions authorized to do business in the county
 30 or in one or more insured savings and loan associations authorized to do
 31 business in the county, and if there are no such insured banks, insured
 32 credit unions or insured savings and loan associations in the county, then
 33 the public fiduciary may deposit ~~such~~ THE funds in any insured bank or
 34 insured credit union or insured savings and loan association in the state.
 35 Money deposited with the county treasurer or deposited or invested with an
 36 insured bank, insured credit union or insured savings and loan association
 37 shall be withdrawn only at the direction of the public fiduciary.

38 B. The public fiduciary may establish or continue an estate or
 39 investment plan of ~~his~~ THE PUBLIC FIDUCIARY'S ward if all of the following
 40 apply:

41 1. The public fiduciary receives the approval of the court for the
 42 plan.

43 2. The plan is consistent with the standard of care imposed on
 44 trustees in ~~section 14-7302~~ SECTIONS 14-10804 AND 14-10806.

3. The public fiduciary has obtained a surety bond in the amount of the assets within the plan if the court finds that a surety bond is necessary or desirable to protect the assets within the plan.

Sec. 14. Title 14, chapter 5, article 7, Arizona Revised Statutes, is amended by adding section 14-5652, to read:

14-5652. Attorneys: fiduciary duties

A. ABSENT AN EXPRESS AGREEMENT TO THE CONTRARY, THE PERFORMANCE BY AN ATTORNEY OF LEGAL SERVICES FOR A FIDUCIARY, SETTLOR OR TESTATOR DOES NOT BY ITSELF ESTABLISH A DUTY IN CONTRACT OR TORT OR OTHERWISE TO ANY THIRD PARTY. FOR THE PURPOSES OF THIS SUBSECTION, THIRD PARTY DOES NOT APPLY TO THE PERSONAL REPRESENTATIVE, SETTLOR OR TESTATOR.

B. AN ATTORNEY WHO ACTS AS A PERSONAL REPRESENTATIVE OR TRUSTEE SHALL DISCLOSE TO ALL ADULT PERSONS WHO HAVE AN INTEREST IN THE ESTATE OR TRUST THE NAMES OF ANY PERSON WHO HAS AN INTEREST IN THAT ESTATE OR TRUST TO WHOM THE ATTORNEY IS CURRENTLY RENDERING OR HAS IN THE PAST RENDERED LEGAL SERVICES. THE ATTORNEY MUST MAKE THIS DISCLOSURE IN WRITING WITHIN A REASONABLE TIME AFTER LEARNING THAT A CLIENT OR FORMER CLIENT HAS AN INTEREST IN THE ESTATE OR TRUST. THE REPRESENTATION OF AN INTERESTED PERSON BY THAT ATTORNEY IS NOT GROUNDS FOR REMOVING THE ATTORNEY AS THE PERSONAL REPRESENTATIVE OR TRUSTEE UNLESS THE ATTORNEY IS UNABLE TO PERFORM THE FIDUCIARY DUTIES AS PERSONAL REPRESENTATIVE OR TRUSTEE WITHOUT VIOLATING THE ATTORNEY'S ETHICAL RESPONSIBILITIES TO THE CLIENT OR FORMER CLIENT.

Sec. 15. Repeal

Title 14, chapter 7, articles 2, 2.1, 3, 6 and 8, Arizona Revised Statutes, are repealed.

Sec. 16. Title 14, Arizona Revised Statutes, is amended by adding chapter 11, to read:

CHAPTER 11

ARIZONA TRUST CODE

ARTICLE 1. GENERAL PROVISIONS

14-10101. Short title

THIS CHAPTER MAY BE CITED AS THE ARIZONA TRUST CODE.

14-10102. Scope

THIS CHAPTER APPLIES TO EXPRESS TRUSTS, CHARITABLE OR NONCHARITABLE TRUSTS AND TRUSTS CREATED PURSUANT TO A STATUTE, JUDGMENT OR DECREE THAT REQUIRES THE TRUST TO BE ADMINISTERED IN THE MANNER OF AN EXPRESS TRUST.

14-10103. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ACTION", WITH RESPECT TO AN ACT OF A TRUSTEE, INCLUDES A FAILURE TO ACT.

2. "BENEFICIARY" MEANS A PERSON WHO EITHER:

(a) HAS A PRESENT OR FUTURE BENEFICIAL INTEREST IN A TRUST, VESTED OR CONTINGENT.

(b) IN A CAPACITY OTHER THAN THAT OF A TRUSTEE, HOLDS A POWER OF APPOINTMENT OVER TRUST PROPERTY.

1 3. "CHARITABLE TRUST" MEANS A TRUST, OR PORTION OF A TRUST, CREATED
2 FOR A CHARITABLE PURPOSE DESCRIBED IN SECTION 14-10405, SUBSECTION A.

3 4. "CONSERVATOR" MEANS A PERSON APPOINTED BY THE COURT TO ADMINISTER
4 THE ESTATE OF A MINOR OR AN ADULT.

5 5. "ENVIRONMENTAL LAW" MEANS A FEDERAL, STATE OR LOCAL LAW, RULE,
6 REGULATION OR ORDINANCE RELATING TO PROTECTION OF THE ENVIRONMENT.

7 6. "GUARDIAN" MEANS A PERSON APPOINTED BY THE COURT TO MAKE DECISIONS
8 REGARDING THE SUPPORT, CARE, EDUCATION, HEALTH AND WELFARE OF A MINOR OR AN
9 ADULT. GUARDIAN DOES NOT INCLUDE A GUARDIAN AD LITEM.

10 7. "INTERESTS OF THE BENEFICIARIES" MEANS THE BENEFICIAL INTERESTS
11 PROVIDED IN THE TERMS OF THE TRUST.

12 8. "INTERNAL REVENUE CODE" HAS THE SAME MEANING PRESCRIBED IN SECTION
13 43-105.

14 9. "JURISDICTION", WITH RESPECT TO A GEOGRAPHIC AREA, INCLUDES A STATE
15 OR COUNTRY.

16 10. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE,
17 TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE,
18 GOVERNMENT, GOVERNMENTAL SUBDIVISION, AGENCY OR INSTRUMENTALITY, PUBLIC
19 CORPORATION OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

20 11. "POWER OF WITHDRAWAL" MEANS A PRESENTLY EXERCISABLE GENERAL POWER
21 OF APPOINTMENT OTHER THAN A POWER EXERCISABLE EITHER:

22 (a) BY A TRUSTEE AND LIMITED BY AN ASCERTAINABLE STANDARD.

23 (b) BY A PERSON OTHER THAN IN A FIDUCIARY CAPACITY AND ONLY ON THE
24 CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST.

25 12. "PROPERTY" MEANS ANYTHING THAT MAY BE THE SUBJECT OF OWNERSHIP,
26 WHETHER REAL OR PERSONAL, LEGAL OR EQUITABLE, OR ANY INTEREST IN ANYTHING
27 THAT MAY BE THE SUBJECT OF OWNERSHIP.

28 13. "QUALIFIED BENEFICIARY" MEANS A BENEFICIARY WHO, ON THE DATE THE
29 BENEFICIARY'S QUALIFICATION IS DETERMINED:

30 (a) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR
31 PRINCIPAL.

32 (b) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME
33 OR PRINCIPAL IF THE INTERESTS OF THE DISTRIBUTEES DESCRIBED IN SUBDIVISION
34 (a) OF THIS PARAGRAPH TERMINATED ON THAT DATE.

35 (c) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME
36 OR PRINCIPAL IF THE TRUST TERMINATED ON THAT DATE.

37 14. "REVOCABLE", AS APPLIED TO A TRUST OR A PORTION OF A TRUST, MEANS
38 REVOCABLE BY A SETTLOR WITHOUT THE CONSENT OF ANY PERSON, INCLUDING THE
39 TRUSTEE OR A PERSON WHO HOLDS AN INTEREST THAT IS EITHER ADVERSE OR NOT
40 ADVERSE.

41 15. "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, WHO CREATES OR
42 CONTRIBUTES PROPERTY TO A TRUST. IF MORE THAN ONE PERSON CREATES OR
43 CONTRIBUTES PROPERTY TO A TRUST, EACH PERSON IS A SETTLOR OF THE PORTION OF
44 THE TRUST PROPERTY ATTRIBUTABLE TO THAT PERSON'S CONTRIBUTION EXCEPT TO THE
45 EXTENT ANOTHER PERSON HAS THE POWER TO REVOKE OR WITHDRAW THAT PORTION.

1 16. "SPENDTHRIFT PROVISION" MEANS A TERM OF A TRUST THAT RESTRAINS BOTH
2 VOLUNTARY AND INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST.

3 17. "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF
4 COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS OR ANY TERRITORY OR
5 INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES. STATE
6 INCLUDES AN INDIAN TRIBE OR BAND RECOGNIZED BY FEDERAL LAW OR FORMALLY
7 ACKNOWLEDGED BY A STATE.

8 18. "TERMS OF A TRUST" MEANS THE MANIFESTATION OF THE SETTLOR'S INTENT
9 REGARDING A TRUST'S PROVISIONS AS EXPRESSED IN THE TRUST INSTRUMENT OR AS MAY
10 BE ESTABLISHED BY OTHER EVIDENCE THAT WOULD BE ADMISSIBLE IN A JUDICIAL
11 PROCEEDING.

12 19. "TRUST INSTRUMENT" MEANS AN INSTRUMENT EXECUTED BY THE SETTLOR THAT
13 CONTAINS TERMS OF THE TRUST, INCLUDING ANY AMENDMENTS TO THAT TRUST.

14 20. "TRUSTEE" INCLUDES AN ORIGINAL, ADDITIONAL AND SUCCESSOR TRUSTEE
15 AND A COTRUSTEE.

16 14-10104. Knowledge

17 A. SUBJECT TO SUBSECTION B, A PERSON HAS KNOWLEDGE OF A FACT IF ANY OF
18 THE FOLLOWING APPLY:

- 19 1. THE PERSON HAS ACTUAL KNOWLEDGE OF IT.
20 2. THE PERSON HAS RECEIVED A NOTICE OR NOTIFICATION OF IT.
21 3. FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO THE PERSON AT THE
22 TIME IN QUESTION, THE PERSON HAS REASON TO KNOW IT.

23 B. AN ORGANIZATION THAT CONDUCTS ACTIVITIES THROUGH EMPLOYEES HAS
24 NOTICE OR KNOWLEDGE OF A FACT INVOLVING A TRUST ONLY FROM THE TIME THE
25 INFORMATION WAS RECEIVED BY AN EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE
26 TRUST OR WOULD HAVE BEEN BROUGHT TO THE EMPLOYEE'S ATTENTION IF THE
27 ORGANIZATION HAD EXERCISED REASONABLE DILIGENCE. AN ORGANIZATION EXERCISES
28 REASONABLE DILIGENCE IF IT MAINTAINS REASONABLE ROUTINES FOR COMMUNICATING
29 SIGNIFICANT INFORMATION TO THE EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE
30 TRUST AND THERE IS REASONABLE COMPLIANCE WITH THE ROUTINES. REASONABLE
31 DILIGENCE DOES NOT REQUIRE AN EMPLOYEE OF THE ORGANIZATION TO COMMUNICATE
32 INFORMATION UNLESS THE COMMUNICATION IS PART OF THE INDIVIDUAL'S REGULAR
33 DUTIES OR THE INDIVIDUAL KNOWS A MATTER INVOLVING THE TRUST WOULD BE
34 MATERIALLY AFFECTED BY THE INFORMATION.

35 14-10105. Default and mandatory rules

36 A. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, THIS
37 CHAPTER GOVERNS:

- 38 1. THE DUTIES, POWERS, EXERCISE OF POWERS RESIGNATION, AND APPOINTMENT
39 OF A TRUSTEE.
40 2. CONFLICTS OF INTEREST OF A TRUSTEE.
41 3. RELATIONS AMONG TRUSTEES.
42 4. MERGERS OR DIVISIONS OF TRUSTS.
43 5. THE RIGHTS AND INTERESTS OF A BENEFICIARY.
44 B. THE TERMS OF A TRUST PREVAIL OVER ANY PROVISION OF THIS CHAPTER
45 EXCEPT:

- 1 1. THE REQUIREMENTS FOR CREATING A TRUST.
- 2 2. THE DUTY OF A TRUSTEE TO ACT IN GOOD FAITH AND IN ACCORDANCE WITH
- 3 THE PURPOSES OF THE TRUST.
- 4 3. THE REQUIREMENT THAT A TRUST AND ITS TERMS BE FOR THE BENEFIT OF
- 5 ITS BENEFICIARIES AND THAT THE TRUST HAVE A PURPOSE THAT IS LAWFUL, NOT
- 6 CONTRARY TO PUBLIC POLICY AND POSSIBLE TO ACHIEVE.
- 7 4. THE POWER OF THE COURT TO MODIFY OR TERMINATE A TRUST UNDER
- 8 SECTIONS 14-10410, 14-10411, 14-10412, 14-10413, 14-10414, 14-10415 AND
- 9 14-10416.
- 10 5. THE EFFECT OF A SPENDTHRIFT PROVISION AND THE RIGHTS OF CERTAIN
- 11 CREDITORS AND ASSIGNEES TO REACH A TRUST AS PROVIDED IN ARTICLE 5 OF THIS
- 12 CHAPTER.
- 13 6. THE POWER OF THE COURT UNDER SECTION 14-10702 TO REQUIRE, DISPENSE
- 14 WITH, MODIFY OR TERMINATE A BOND.
- 15 7. THE POWER OF THE COURT UNDER SECTION 14-10708, SUBSECTION B TO
- 16 ADJUST A TRUSTEE'S COMPENSATION SPECIFIED IN THE TERMS OF THE TRUST THAT IS
- 17 UNREASONABLY LOW OR HIGH.
- 18 8. THE DUTY TO RESPOND TO THE REQUEST OF A QUALIFIED BENEFICIARY OF AN
- 19 IRREVOCABLE TRUST FOR TRUSTEE'S REPORTS AND OTHER INFORMATION REASONABLY
- 20 RELATED TO THE ADMINISTRATION OF A TRUST.
- 21 9. THE EFFECT OF AN EXCULPATORY TERM UNDER SECTION 14-11008.
- 22 10. THE RIGHTS UNDER SECTIONS 14-11010, 14-11011, 14-11012 AND 14-11013
- 23 OF A PERSON OTHER THAN A TRUSTEE OR BENEFICIARY.
- 24 11. PERIODS OF LIMITATION FOR COMMENCING A JUDICIAL PROCEEDING.
- 25 12. THE POWER OF THE COURT TO TAKE ACTION AND EXERCISE JURISDICTION AS
- 26 MAY BE NECESSARY IN THE INTERESTS OF JUSTICE.
- 27 13. THE SUBJECT MATTER JURISDICTION OF THE COURT AND VENUE FOR
- 28 COMMENCING A PROCEEDING AS PROVIDED IN SECTIONS 14-10203 AND 14-10204.
- 29 14-10106. Common law of trusts; principles of equity
- 30 A. THE COMMON LAW OF TRUSTS AND PRINCIPLES OF EQUITY SUPPLEMENT THIS
- 31 CHAPTER, EXCEPT TO THE EXTENT MODIFIED BY THIS CHAPTER OR ANOTHER STATUTE OF
- 32 THIS STATE.
- 33 B. THE COURT SHALL LOOK TO THE RESTATEMENT (SECOND) OF TRUSTS FOR
- 34 INTERPRETATION OF THE COMMON LAW AND NOT TO SUBSEQUENT RESTATEMENTS OF TRUSTS
- 35 TO DETERMINE:
- 36 1. THE RIGHTS AND POWERS OF CREDITORS OF BENEFICIARIES.
- 37 2. THE DUTIES OF TRUSTIES TO DISTRIBUTE TO THOSE TO WHOM A BENEFICIARY
- 38 OWES ANY DUTIES.
- 39 3. WHETHER PUBLIC POLICY MAY AFFECT ENFORCEABILITY AND EFFECTIVENESS
- 40 OF THE TERMS OF THE TRUST.
- 41 4. AND EFFECTUATE THE SETTLOR'S INTENT.
- 42 14-10107. Governing law
- 43 A. THE MEANING AND EFFECT OF THE TERMS OF A TRUST ARE DETERMINED BY
- 44 THE LAW OF THE JURISDICTION DESIGNATED IN THE TERMS OF THE TRUST INSTRUMENT.

B. IN THE ABSENCE OF A CONTROLLING DESIGNATION IN THE TERMS OF THE TRUST, THE LAWS OF THE JURISDICTION WHERE THE TRUST WAS EXECUTED DETERMINE THE VALIDITY OF THE TRUST, AND THE LAWS OF DESCENT AND THE LAW OF THE PRINCIPAL PLACE OF ADMINISTRATION DETERMINE THE ADMINISTRATION OF THE TRUST.

14-10108. Principal place of administration

A. WITHOUT PRECLUDING OTHER MEANS FOR ESTABLISHING A SUFFICIENT CONNECTION WITH THE DESIGNATED JURISDICTION, TERMS OF A TRUST DESIGNATING THE PRINCIPAL PLACE OF ADMINISTRATION ARE VALID AND CONTROLLING IF EITHER:

1. A TRUSTEE'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN OR A TRUSTEE IS A RESIDENT OF THE DESIGNATED JURISDICTION.

2. ALL OR PART OF THE ADMINISTRATION OCCURS IN THE DESIGNATED JURISDICTION.

B. A TRUSTEE IS UNDER A CONTINUING DUTY TO ADMINISTER THE TRUST AT A PLACE APPROPRIATE TO ITS PURPOSES, ITS ADMINISTRATION AND THE INTERESTS OF THE BENEFICIARIES.

C. WITHOUT PRECLUDING THE RIGHT OF THE COURT TO ORDER, APPROVE OR DISAPPROVE A TRANSFER, THE TRUSTEE, IN FURTHERANCE OF THE DUTY PRESCRIBED BY SUBSECTION B OF THIS SECTION, MAY TRANSFER THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION TO ANOTHER STATE OR TO A JURISDICTION OUTSIDE OF THE UNITED STATES.

D. THE TRUSTEE SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF A PROPOSED TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION AT LEAST SIXTY DAYS BEFORE INITIATING THE TRANSFER. UNLESS A CORPORATE TRUSTEE INDICATES AN INTENT TO CHANGE THE PRINCIPAL PLACE OF BUSINESS IN A NOTICE TO QUALIFIED BENEFICIARIES, A TRANSFER BY THE CORPORATE TRUSTEE OF SOME OF THE FUNCTIONS OF A TRUST TO ANOTHER STATE OR STATES IS NOT A TRANSFER OF THE TRUST'S PRINCIPAL PLACE OF BUSINESS IF THE CORPORATE TRUSTEE MAINTAINS AN OFFICE IN THIS STATE. THE NOTICE OF PROPOSED TRANSFER MUST INCLUDE:

1. THE NAME OF THE JURISDICTION TO WHICH THE PRINCIPAL PLACE OF ADMINISTRATION IS TO BE TRANSFERRED.

2. THE ADDRESS AND TELEPHONE NUMBER OF THE NEW LOCATION AT WHICH THE TRUSTEE CAN BE CONTACTED.

3. AN EXPLANATION OF THE REASONS FOR THE PROPOSED TRANSFER.

4. THE DATE ON WHICH THE PROPOSED TRANSFER IS ANTICIPATED TO OCCUR.

5. THE DATE, AT LEAST SIXTY DAYS AFTER THE GIVING OF THE NOTICE, BY WHICH THE QUALIFIED BENEFICIARY MUST NOTIFY THE TRUSTEE OF AN OBJECTION TO THE PROPOSED TRANSFER.

E. THE AUTHORITY OF A TRUSTEE UNDER THIS SECTION TO TRANSFER A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION TERMINATES IF A QUALIFIED BENEFICIARY NOTIFIES THE TRUSTEE IN WRITING OF AN OBJECTION TO THE PROPOSED TRANSFER ON OR BEFORE THE DATE SPECIFIED IN THE NOTICE.

F. IN CONNECTION WITH A TRANSFER OF THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION, THE TRUSTEE MAY TRANSFER SOME OR ALL OF THE TRUST PROPERTY TO A SUCCESSOR TRUSTEE DESIGNATED IN THE TERMS OF THE TRUST OR APPOINTED PURSUANT TO SECTION 14-10704.

14-10109. Methods and waiver of notice

A. NOTICE TO A PERSON UNDER THIS CHAPTER OR THE SENDING OF A DOCUMENT TO A PERSON UNDER THIS CHAPTER MUST BE ACCOMPLISHED IN A MANNER REASONABLY SUITABLE UNDER THE CIRCUMSTANCES AND LIKELY TO RESULT IN RECEIPT OF THE NOTICE OR DOCUMENT. PERMISSIBLE METHODS OF NOTICE OR FOR SENDING A DOCUMENT INCLUDE FIRST CLASS MAIL, PERSONAL DELIVERY, DELIVERY TO THE PERSON'S LAST KNOWN PLACE OF RESIDENCE OR PLACE OF BUSINESS OR A PROPERLY DIRECTED ELECTRONIC MESSAGE.

B. NOTICE OTHERWISE REQUIRED UNDER THIS CHAPTER OR A DOCUMENT OTHERWISE REQUIRED TO BE SENT UNDER THIS CHAPTER NEED NOT BE PROVIDED TO A PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN TO AND NOT REASONABLY ASCERTAINABLE BY THE TRUSTEE.

C. NOTICE UNDER THIS CHAPTER OR THE SENDING OF A DOCUMENT UNDER THIS CHAPTER MAY BE WAIVED BY THE PERSON TO BE NOTIFIED OR SENT THE DOCUMENT.

D. NOTICE OF A JUDICIAL PROCEEDING MUST BE GIVEN PURSUANT TO SECTION 14-1401.

14-10110. Others treated as qualified beneficiaries

A CHARITABLE ORGANIZATION THAT IS EXPRESSLY AND IRREVOCABLY DESIGNATED TO RECEIVE DISTRIBUTIONS UNDER THE TERMS OF A CHARITABLE TRUST OR A PERSON APPOINTED TO ENFORCE A TRUST CREATED FOR THE CARE OF AN ANIMAL OR ANOTHER NONCHARITABLE PURPOSE AS PROVIDED IN SECTION 14-10408 OR 14-10409 HAS THE RIGHTS OF A QUALIFIED BENEFICIARY UNDER THIS CHAPTER.

14-10111. Nonjudicial settlement agreements; definition

A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B OF THIS SECTION, AND EXCEPT FOR MODIFICATION OR TERMINATION OF A TRUST AS OTHERWISE PERMITTED PURSUANT TO THE TRUST INSTRUMENT, INTERESTED PERSONS MAY ENTER INTO A BINDING NONJUDICIAL SETTLEMENT AGREEMENT WITH RESPECT TO ANY MATTER INVOLVING A TRUST.

B. A NONJUDICIAL SETTLEMENT AGREEMENT IS VALID ONLY TO THE EXTENT IT DOES NOT VIOLATE A MATERIAL PURPOSE OF THE TRUST AND INCLUDES TERMS AND CONDITIONS THAT COULD BE PROPERLY APPROVED BY THE COURT UNDER THIS CHAPTER OR OTHER APPLICABLE LAW.

C. MATTERS THAT MAY BE RESOLVED BY A NONJUDICIAL SETTLEMENT AGREEMENT INCLUDE:

1. THE INTERPRETATION OR CONSTRUCTION OF THE TERMS OF THE TRUST.
2. THE APPROVAL OF A TRUSTEE'S REPORT OR ACCOUNTING.
3. DIRECTION TO A TRUSTEE TO REFRAIN FROM PERFORMING A PARTICULAR ACT OR THE GRANT TO A TRUSTEE OF ANY NECESSARY OR DESIRABLE POWER.
4. THE RESIGNATION OR APPOINTMENT OF A TRUSTEE AND THE DETERMINATION OF A TRUSTEE'S COMPENSATION.
5. THE TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION.
6. THE LIABILITY OF A TRUSTEE FOR AN ACTION RELATING TO THE TRUST.

D. ANY INTERESTED PERSON MAY REQUEST THE COURT TO APPROVE A NONJUDICIAL SETTLEMENT AGREEMENT TO DETERMINE WHETHER THE REPRESENTATION AS PROVIDED IN ARTICLE 3 OF THIS CHAPTER WAS ADEQUATE AND TO DETERMINE WHETHER

1 THE AGREEMENT CONTAINS TERMS AND CONDITIONS THE COURT COULD HAVE PROPERLY
2 APPROVED.

3 E. THIS SECTION APPLIES ONLY TO ANY TRUST THAT BECOMES IRREVOCABLE ON
4 OR AFTER JANUARY 1, 2009.

5 F. FOR THE PURPOSES OF THIS SECTION, "INTERESTED PERSON" HAS THE SAME
6 MEANING PRESCRIBED IN SECTION 14-1201.

7 14-10112. Rules of construction

8 THE RULES OF CONSTRUCTION THAT APPLY IN THIS STATE TO THE
9 INTERPRETATION OF AND DISPOSITION OF PROPERTY BY WILL ALSO APPLY AS
10 APPROPRIATE TO THE INTERPRETATION OF THE TERMS OF A TRUST AND THE DISPOSITION
11 OF THE TRUST PROPERTY.

12 ARTICLE 2. JUDICIAL PROCEEDINGS

13 14-10201. Role of court in administration of trust

14 A. THE COURT MAY INTERVENE IN THE ADMINISTRATION OF A TRUST TO THE
15 EXTENT ITS JURISDICTION IS INVOKED BY AN INTERESTED PERSON OR AS PROVIDED BY
16 LAW.

17 B. A TRUST IS NOT SUBJECT TO CONTINUING JUDICIAL SUPERVISION UNLESS
18 ORDERED BY THE COURT.

19 C. A JUDICIAL PROCEEDING INVOLVING A TRUST MAY RELATE TO ANY MATTER
20 INVOLVING THE TRUST'S ADMINISTRATION, INCLUDING A REQUEST FOR INSTRUCTIONS
21 AND AN ACTION TO DECLARE RIGHTS.

22 14-10202. Jurisdiction over trustee and beneficiary

23 A. BY ACCEPTING THE TRUSTEESHIP OF A TRUST HAVING ITS PRINCIPAL PLACE
24 OF ADMINISTRATION IN THIS STATE OR BY MOVING THE PRINCIPAL PLACE OF
25 ADMINISTRATION TO THIS STATE, THE TRUSTEE SUBMITS PERSONALLY TO THE
26 JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER INVOLVING THE
27 TRUST.

28 B. WITH RESPECT TO THEIR INTERESTS IN THE TRUST, THE BENEFICIARIES OF
29 A TRUST HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE ARE
30 SUBJECT TO THE JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER
31 INVOLVING THE TRUST. BY ACCEPTING A DISTRIBUTION FROM SUCH A TRUST, THE
32 RECIPIENT SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURTS OF THIS STATE
33 REGARDING ANY MATTER INVOLVING THE TRUST.

34 C. THIS SECTION DOES NOT PRECLUDE OTHER METHODS OF OBTAINING
35 JURISDICTION OVER A TRUSTEE, BENEFICIARY OR OTHER PERSON RECEIVING PROPERTY
36 FROM THE TRUST.

37 14-10203. Subject matter jurisdiction

38 A. THE SUPERIOR COURT HAS EXCLUSIVE JURISDICTION OF PROCEEDINGS IN
39 THIS STATE BROUGHT BY A TRUSTEE OR BENEFICIARY CONCERNING THE ADMINISTRATION
40 OF A TRUST.

41 B. THE SUPERIOR COURT HAS CONCURRENT JURISDICTION WITH OTHER COURTS OF
42 THIS STATE OF OTHER PROCEEDINGS INVOLVING A TRUST.

43 14-10204. Venue

44 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B, VENUE FOR A JUDICIAL
45 PROCEEDING INVOLVING A TRUST IS IN THE COUNTY OF THIS STATE IN WHICH THE

1 TRUST'S PRINCIPAL PLACE OF ADMINISTRATION IS OR WILL BE LOCATED AND, IF THE
2 TRUST IS CREATED BY WILL AND THE ESTATE IS NOT YET CLOSED, IN THE COUNTY IN
3 WHICH THE DECEDENT'S ESTATE IS BEING ADMINISTERED.

4 B. IF A TRUST HAS NO TRUSTEE, VENUE FOR A JUDICIAL PROCEEDING FOR THE
5 APPOINTMENT OF A TRUSTEE IS IN A COUNTY OF THIS STATE IN WHICH A BENEFICIARY
6 RESIDES, IN A COUNTY IN WHICH ANY TRUST PROPERTY IS LOCATED, AND IF THE TRUST
7 IS CREATED BY WILL, IN THE COUNTY IN WHICH THE DECEDENT'S ESTATE WAS OR IS
8 BEING ADMINISTERED.

9 14-10205. Alternative dispute resolution

10 A TRUST INSTRUMENT MAY PROVIDE MANDATORY, EXCLUSIVE AND REASONABLE
11 PROCEDURES TO RESOLVE ISSUES BETWEEN THE TRUSTEE AND INTERESTED PERSONS OR
12 AMONG INTERESTED PERSONS WITH REGARD TO THE ADMINISTRATION OR DISTRIBUTION OF
13 THE TRUST.

14 ARTICLE 3. REPRESENTATION

15 14-10301. Representation

16 SECTIONS 14-1404, 14-1405, 14-1406, 14-1407 AND 14-1408 APPLY TO TRUSTS
17 GOVERNED BY THIS CHAPTER.

18 ARTICLE 4. CREATION, VALIDITY, MODIFICATION
19 AND TERMINATION OF TRUST

20 14-10401. Methods of creating trust

21 A TRUST MAY BE CREATED BY:

22 1. TRANSFER OF PROPERTY TO ANOTHER PERSON AS TRUSTEE DURING THE
23 SETTLOR'S LIFETIME OR BY WILL OR OTHER DISPOSITION TAKING EFFECT ON THE
24 SETTLOR'S DEATH.

25 2. DECLARATION BY THE OWNER OF PROPERTY THAT THE OWNER HOLDS
26 IDENTIFIABLE PROPERTY AS TRUSTEE.

27 3. EXERCISE OF A POWER OF APPOINTMENT IN FAVOR OF A TRUSTEE.

28 14-10402. Requirements for creation

29 A. EXCEPT AS PROVIDED IN SECTION 14-5409, A TRUST IS CREATED ONLY IF
30 ALL OF THE FOLLOWING ARE TRUE:

31 1. THE SETTLOR HAS CAPACITY TO CREATE A TRUST.

32 2. THE SETTLOR INDICATES AN INTENTION TO CREATE THE TRUST.

33 3. THE TRUST HAS A DEFINITE BENEFICIARY OR IS:

34 (a) A CHARITABLE TRUST.

35 (b) A TRUST FOR THE CARE OF AN ANIMAL, AS PROVIDED IN SECTION
36 14-10408.

37 (c) A TRUST FOR A NONCHARITABLE PURPOSE, AS PROVIDED IN SECTION
38 14-10409.

39 4. THE TRUSTEE HAS DUTIES TO PERFORM.

40 5. THE SAME PERSON IS NOT THE SOLE TRUSTEE AND SOLE BENEFICIARY.

41 B. A BENEFICIARY IS DEFINITE IF THE BENEFICIARY CAN BE ASCERTAINED NOW
42 OR IN THE FUTURE, SUBJECT TO ANY APPLICABLE RULE AGAINST PERPETUITIES.

43 C. A POWER IN A TRUSTEE OR OTHER PERSON TO SELECT A BENEFICIARY FROM
44 AN INDEFINITE CLASS IS VALID. IF THE POWER IS NOT EXERCISED WITHIN A
45 REASONABLE TIME, THE POWER FAILS AND THE PROPERTY SUBJECT TO THE POWER PASSES

TO THE PERSONS WHO WOULD HAVE TAKEN THE PROPERTY HAD THE POWER NOT BEEN CONFERRED.

14-10403. Trusts created in other jurisdictions

A TRUST NOT CREATED BY WILL IS VALIDLY CREATED IF ITS CREATION COMPLIES WITH THE LAW OF THE JURISDICTION IN WHICH THE TRUST INSTRUMENT WAS EXECUTED OR THE LAW OF THE JURISDICTION IN WHICH, AT THE TIME OF CREATION, EITHER:

1. THE SETTLOR WAS DOMICILED, HAD A PLACE OF ABODE OR WAS A NATIONAL.
2. A TRUSTEE WAS DOMICILED OR HAD A PLACE OF BUSINESS.
3. ANY TRUST PROPERTY WAS LOCATED.

14-10404. Trust purposes

A TRUST MAY BE CREATED ONLY TO THE EXTENT THAT ITS PURPOSES ARE LAWFUL, NOT CONTRARY TO PUBLIC POLICY AND POSSIBLE TO ACHIEVE. A TRUST AND ITS TERMS MUST BE FOR THE BENEFIT OF ITS BENEFICIARIES.

14-10405. Charitable purposes; enforcement

A. A CHARITABLE TRUST MAY BE CREATED FOR THE RELIEF OF POVERTY, THE ADVANCEMENT OF EDUCATION, RELIGION OR SCIENCE, THE PROMOTION OF HEALTH, GOVERNMENTAL OR MUNICIPAL PURPOSES OR OTHER PURPOSES, THE ACHIEVEMENT OF WHICH IS BENEFICIAL TO THE COMMUNITY, OR FOR THE SUPPORT OF ONE OR MORE ORGANIZATIONS THAT HAVE THE PURPOSES PRESCRIBED IN THIS SECTION EXCLUSIVELY.

B. IF THE TERMS OF A CHARITABLE TRUST DO NOT INDICATE A PARTICULAR CHARITABLE PURPOSE OR BENEFICIARY, THE COURT MAY SELECT ONE OR MORE CHARITABLE PURPOSES OR BENEFICIARIES. THE SELECTION MUST BE CONSISTENT WITH THE SETTLOR'S INTENTION TO THE EXTENT IT CAN BE ASCERTAINED.

C. THE SETTLOR OF A CHARITABLE TRUST, AMONG OTHERS, MAY MAINTAIN A PROCEEDING TO ENFORCE THE TRUST.

14-10406. Creation of trust induced by fraud, duress or undue influence

A TRUST IS VOID, IN WHOLE OR IN PART, TO THE EXTENT ITS CREATION WAS INDUCED BY FRAUD, DURESS OR UNDUE INFLUENCE.

14-10407. Evidence of oral trust

EXCEPT AS REQUIRED BY A STATUTE OTHER THAN THIS CHAPTER, A TRUST NEED NOT BE EVIDENCED BY A TRUST INSTRUMENT, BUT THE CREATION OF AN ORAL TRUST SHALL BE ESTABLISHED ONLY BY CLEAR AND CONVINCING EVIDENCE AND ITS TERMS SHALL BE ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE.

14-10408. Trust for care of animal

A. A TRUST MAY BE CREATED TO PROVIDE FOR THE CARE OF AN ANIMAL ALIVE DURING THE SETTLOR'S LIFETIME. THE TRUST TERMINATES ON THE DEATH OF THE ANIMAL OR, IF THE TRUST WAS CREATED TO PROVIDE FOR THE CARE OF MORE THAN ONE ANIMAL ALIVE DURING THE SETTLOR'S LIFETIME, ON THE DEATH OF THE LAST SURVIVING ANIMAL.

B. A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A PERSON APPOINTED IN THE TERMS OF THE TRUST OR, IF NO PERSON IS SO APPOINTED, BY A PERSON APPOINTED BY THE COURT. A PERSON HAVING AN INTEREST IN THE WELFARE OF THE ANIMAL MAY REQUEST THE COURT TO APPOINT A PERSON TO ENFORCE THE TRUST OR TO REMOVE A PERSON APPOINTED.

1 C. PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE APPLIED ONLY
 2 TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT DETERMINES THAT THE VALUE
 3 OF THE TRUST PROPERTY EXCEEDS THE AMOUNT REQUIRED FOR THE INTENDED USE.
 4 EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, PROPERTY NOT REQUIRED
 5 FOR THE INTENDED USE MUST BE DISTRIBUTED TO THE SETTLOR, IF THEN LIVING, OR
 6 OTHERWISE TO THE SETTLOR'S SUCCESSORS IN INTEREST.

7 14-10409. Noncharitable trust without ascertainable beneficiary

8 EXCEPT AS OTHERWISE PROVIDED IN SECTION 14-10408 OR BY ANOTHER STATUTE,
 9 THE FOLLOWING RULES APPLY:

10 1. A TRUST MAY BE CREATED FOR A NONCHARITABLE PURPOSE WITHOUT A
 11 DEFINITE OR DEFINITELY ASCERTAINABLE BENEFICIARY OR FOR A NONCHARITABLE BUT
 12 OTHERWISE VALID PURPOSE TO BE SELECTED BY THE TRUSTEE, PROVIDED THAT THE
 13 TRUST MAY NOT BE ENFORCED FOR MORE THAN NINETY YEARS AFTER ITS CREATION.

14 2. A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A PERSON
 15 APPOINTED IN THE TERMS OF THE TRUST OR, IF NO PERSON IS SO APPOINTED, BY A
 16 PERSON APPOINTED BY THE COURT.

17 3. PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE APPLIED ONLY
 18 TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT DETERMINES THAT THE VALUE
 19 OF THE TRUST PROPERTY EXCEEDS THE AMOUNT REQUIRED FOR THE INTENDED
 20 USE. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, PROPERTY NOT
 21 REQUIRED FOR THE INTENDED USE MUST BE DISTRIBUTED TO THE SETTLOR, IF THEN
 22 LIVING, OR OTHERWISE TO THE SETTLOR'S SUCCESSORS IN INTEREST.

23 14-10410. Modification or termination of trust; proceedings for
 24 approval or disapproval

25 A. IN ADDITION TO THE METHODS OF TERMINATION PRESCRIBED BY SECTIONS
 26 14-10411, 14-10412, 14-10413 AND 14-10414, A TRUST TERMINATES TO THE EXTENT
 27 THE TRUST IS REVOKED OR EXPIRES PURSUANT TO ITS TERMS, NO PURPOSE OF THE
 28 TRUST REMAINS TO BE ACHIEVED OR THE PURPOSES OF THE TRUST HAVE BECOME
 29 UNLAWFUL, CONTRARY TO PUBLIC POLICY OR IMPOSSIBLE TO ACHIEVE.

30 B. A PROCEEDING TO APPROVE OR DISAPPROVE A PROPOSED MODIFICATION OR
 31 TERMINATION UNDER SECTIONS 14-10411, 14-10412, 14-10413, 14-10414, 14-10415
 32 AND 14-10416, OR TRUST COMBINATION OR DIVISION UNDER SECTION 14-10417, MAY BE
 33 COMMENCED BY A TRUSTEE OR BENEFICIARY, AND A PROCEEDING TO APPROVE OR
 34 DISAPPROVE A PROPOSED MODIFICATION OR TERMINATION UNDER SECTION 14-10411 MAY
 35 BE COMMENCED BY THE SETTLOR. THE SETTLOR OF A CHARITABLE TRUST MAY MAINTAIN
 36 A PROCEEDING TO MODIFY THE TRUST UNDER SECTION 14-10413.

37 14-10411. Modification or termination of noncharitable
 38 irrevocable trust by consent

39 A. A NONCHARITABLE IRREVOCABLE TRUST MAY BE TERMINATED ON CONSENT OF
 40 ALL OF THE BENEFICIARIES IF THE COURT CONCLUDES THAT CONTINUANCE OF THE TRUST
 41 IS NOT NECESSARY TO ACHIEVE ANY MATERIAL PURPOSE OF THE TRUST. A
 42 NONCHARITABLE IRREVOCABLE TRUST MAY BE MODIFIED ON CONSENT OF ALL OF THE
 43 BENEFICIARIES IF THE COURT CONCLUDES THAT MODIFICATION IS NOT INCONSISTENT
 44 WITH A MATERIAL PURPOSE OF THE TRUST.

1 B. ON TERMINATION OF A TRUST UNDER SUBSECTION A, THE TRUSTEE SHALL
2 DISTRIBUTE THE TRUST PROPERTY AS AGREED BY THE BENEFICIARIES.

3 C. IF NOT ALL OF THE BENEFICIARIES CONSENT TO A PROPOSED MODIFICATION
4 OR TERMINATION OF THE TRUST UNDER SUBSECTION A, THE MODIFICATION OR
5 TERMINATION MAY BE APPROVED BY THE COURT IF THE COURT IS SATISFIED THAT:

6 1. IF ALL OF THE BENEFICIARIES HAD CONSENTED, THE TRUST COULD HAVE
7 BEEN MODIFIED OR TERMINATED UNDER THIS SECTION.

8 2. THE INTERESTS OF A BENEFICIARY WHO DOES NOT CONSENT WILL BE
9 ADEQUATELY PROTECTED.

10 14-10412. Modification or termination because of unanticipated
11 circumstances or inability to administer trust
12 effectively

13 A. THE COURT MAY MODIFY THE ADMINISTRATIVE OR DISPOSITIVE TERMS OF A
14 TRUST OR TERMINATE THE TRUST IF, BECAUSE OF CIRCUMSTANCES NOT ANTICIPATED BY
15 THE SETTLOR, MODIFICATION OR TERMINATION WILL FURTHER THE PURPOSES OF THE
16 TRUST. TO THE EXTENT PRACTICABLE, THE MODIFICATION MUST BE MADE IN
17 ACCORDANCE WITH THE SETTLOR'S PROBABLE INTENTION.

18 B. THE COURT MAY MODIFY THE ADMINISTRATIVE TERMS OF A TRUST IF
19 CONTINUATION OF THE TRUST ON ITS EXISTING TERMS WOULD BE IMPRACTICABLE OR
20 WASTEFUL OR WOULD IMPAIR THE TRUST'S ADMINISTRATION.

21 C. ON TERMINATION OF A TRUST UNDER THIS SECTION, THE TRUSTEE SHALL
22 DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE
23 TRUST.

24 14-10413. Cy pres

25 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B, IF A PARTICULAR
26 CHARITABLE PURPOSE BECOMES UNLAWFUL, IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE OR
27 WASTEFUL:

28 1. THE TRUST DOES NOT FAIL IN WHOLE OR IN PART.

29 2. THE TRUST PROPERTY DOES NOT REVERT TO THE SETTLOR OR THE SETTLOR'S
30 SUCCESSORS IN INTEREST.

31 3. THE COURT MAY APPLY CY PRES TO MODIFY OR TERMINATE THE TRUST BY
32 DIRECTING THAT THE TRUST PROPERTY BE APPLIED OR DISTRIBUTED IN WHOLE OR IN
33 PART IN A MANNER CONSISTENT WITH THE SETTLOR'S CHARITABLE PURPOSES.

34 B. A PROVISION IN THE TERMS OF A CHARITABLE TRUST THAT WOULD RESULT IN
35 DISTRIBUTION OF THE TRUST PROPERTY TO A NONCHARITABLE BENEFICIARY PREVAILS
36 OVER THE POWER OF THE COURT UNDER SUBSECTION A TO APPLY CY PRES TO MODIFY OR
37 TERMINATE THE TRUST ONLY IF, WHEN THE PROVISION TAKES EFFECT:

38 1. THE TRUST PROPERTY IS TO REVERT TO THE SETTLOR AND THE SETTLOR IS
39 STILL LIVING.

40 2. FEWER THAN TWENTY-ONE YEARS HAVE ELAPSED SINCE THE DATE OF THE
41 TRUST'S CREATION.

42 14-10414. Modification or termination of uneconomic trust

43 A. AFTER NOTICE TO THE QUALIFIED BENEFICIARIES, THE TRUSTEE OF A TRUST
44 THAT CONSISTS OF TRUST PROPERTY HAVING A TOTAL VALUE OF LESS THAN ONE HUNDRED
45 THOUSAND DOLLARS OR THAT IS UNECONOMIC TO ADMINISTER MAY TERMINATE THE TRUST

1 IF THE TRUSTEE CONCLUDES THAT THE VALUE OF THE TRUST PROPERTY IS INSUFFICIENT
2 TO JUSTIFY THE COST OF ADMINISTRATION. THIS SUBSECTION DOES NOT APPLY TO AN
3 INTERESTED TRUSTEE AS DEFINED IN SECTION 14-11014.

4 B. THE COURT MAY MODIFY OR TERMINATE A TRUST OR REMOVE THE TRUSTEE AND
5 APPOINT A DIFFERENT TRUSTEE IF IT DETERMINES THAT THE VALUE OF THE TRUST
6 PROPERTY IS INSUFFICIENT TO JUSTIFY THE COST OF ADMINISTRATION.

7 C. ON TERMINATION OF A TRUST UNDER THIS SECTION, THE TRUSTEE SHALL
8 DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE
9 TRUST.

10 D. THIS SECTION DOES NOT APPLY TO AN EASEMENT FOR CONSERVATION OR
11 PRESERVATION.

12 14-10415. Reformation to correct mistakes

13 THE COURT MAY REFORM THE TERMS OF A TRUST, EVEN IF UNAMBIGUOUS, TO
14 CONFORM THE TERMS TO THE SETTLOR'S INTENTION IF IT IS PROVED BY CLEAR AND
15 CONVINCING EVIDENCE THAT BOTH THE SETTLOR'S INTENT AND THE TERMS OF THE TRUST
16 WERE AFFECTED BY A MISTAKE OF FACT OR LAW, WHETHER IN EXPRESSION OR
17 INDUCEMENT.

18 14-10416. Modification to achieve settlor's tax objectives

19 TO ACHIEVE THE SETTLOR'S TAX OBJECTIVES, THE COURT MAY MODIFY THE TERMS
20 OF A TRUST IN A MANNER THAT IS NOT CONTRARY TO THE SETTLOR'S PROBABLE
21 INTENTION. THE COURT MAY PROVIDE THAT THE MODIFICATION HAS RETROACTIVE
22 EFFECT.

23 14-10417. Combination and division of trusts

24 UNLESS THE TRUST INSTRUMENT PROVIDES THAT NOTICE IS NOT REQUIRED, AFTER
25 NOTICE TO THE QUALIFIED BENEFICIARIES, A TRUSTEE MAY COMBINE TWO OR MORE
26 TRUSTS INTO A SINGLE TRUST OR DIVIDE A TRUST INTO TWO OR MORE SEPARATE
27 TRUSTS, IF THE RESULT DOES NOT IMPAIR RIGHTS OF ANY BENEFICIARY OR ADVERSELY
28 AFFECT ACHIEVEMENT OF THE PURPOSES OF THE TRUST.

29 ARTICLE 5. CREDITORS' CLAIMS;
30 SPENDTHRIFT AND DISCRETIONARY TRUSTS

31 14-10501. Rights of beneficiary's creditor or assignee:
32 exception

33 A. THE COURT MAY AUTHORIZE A CREDITOR OR ASSIGNEE OF THE BENEFICIARY
34 TO REACH THE BENEFICIARY'S INTEREST BY ATTACHMENT OF PRESENT OR FUTURE
35 DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY OR BY OTHER MEANS. THE
36 COURT MAY LIMIT THE AWARD TO SUCH RELIEF AS IS APPROPRIATE UNDER THE
37 CIRCUMSTANCES.

38 B. THIS SECTION DOES NOT APPLY AND A TRUSTEE HAS NO LIABILITY TO ANY
39 CREDITOR OF A BENEFICIARY FOR ANY DISTRIBUTIONS MADE TO OR FOR THE BENEFIT OF
40 THE BENEFICIARY TO THE EXTENT A BENEFICIARY'S INTEREST IS PROTECTED BY A
41 SPENDTHRIFT PROVISION OR IS A DISCRETIONARY TRUST INTEREST REFERRED TO IN
42 SECTION 14-10504.

43 14-10502. Spendthrift provision

44 A. A SPENDTHRIFT PROVISION IS VALID ONLY IF IT RESTRAINS EITHER
45 VOLUNTARY OR INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST.

B. A TERM OF A TRUST PROVIDING THAT THE INTEREST OF A BENEFICIARY IS HELD SUBJECT TO A SPENDTHRIFT TRUST, OR WORDS OF SIMILAR IMPORT, IS SUFFICIENT TO RESTRAIN BOTH VOLUNTARY AND INVOLUNTARY TRANSFER OF THE BENEFICIARY'S INTEREST.

C. A BENEFICIARY MAY NOT TRANSFER AN INTEREST IN A TRUST IN VIOLATION OF A VALID SPENDTHRIFT PROVISION AND, EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, A CREDITOR OR ASSIGNEE OF THE BENEFICIARY MAY NOT ATTACH, GARNISH, EXECUTE ON OR OTHERWISE REACH THE INTEREST OR A DISTRIBUTION BY THE TRUSTEE BEFORE ITS RECEIPT BY THE BENEFICIARY.

14-10503. Exceptions to spendthrift provision; definition

A. EVEN IF A TRUST CONTAINS A SPENDTHRIFT PROVISION, A BENEFICIARY'S CHILD WHO HAS A JUDGMENT OR COURT ORDER AGAINST THE BENEFICIARY FOR SUPPORT OR MAINTENANCE, OR A JUDGMENT CREDITOR WHO HAS PROVIDED SERVICES RELATING TO THE PROTECTION OF A BENEFICIARY'S INTEREST IN THE TRUST, MAY OBTAIN FROM A COURT AN ORDER ATTACHING PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY ONLY FOR THESE MATTERS.

B. THE EXCEPTION PRESCRIBED IN SUBSECTION A IS UNENFORCEABLE AGAINST A SPECIAL NEEDS TRUST, A SUPPLEMENTAL NEEDS TRUST OR A SIMILAR TRUST THAT IS ESTABLISHED FOR A DISABLED PERSON IF THE APPLICABILITY OF SUCH A PROVISION COULD INVALIDATE SUCH A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME PURPOSES OR IF THE APPLICABILITY OF SUCH A PROVISION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING THE DISABLED PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING MEDICAID AND SUPPLEMENTAL SECURITY INCOME.

C. A SPENDTHRIFT PROVISION IS UNENFORCEABLE AGAINST A CLAIM OF THIS STATE OR THE UNITED STATES ONLY TO THE EXTENT A STATUTE OF THIS STATE OR FEDERAL LAW SO PROVIDES.

D. FOR THE PURPOSES OF THIS SECTION, "CHILD" INCLUDES ANY PERSON FOR WHOM AN ORDER OR JUDGMENT FOR CHILD SUPPORT HAS BEEN VALIDLY ENTERED IN THIS OR ANOTHER STATE.

14-10504. Discretionary trusts; effect of standard; definition

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION, A CREDITOR OF A BENEFICIARY MAY NOT COMPEL A DISTRIBUTION THAT IS SUBJECT TO THE TRUSTEE'S DISCRETION, EVEN IF EITHER:

1. THE DISCRETION IS EXPRESSED IN THE FORM OF A STANDARD OF DISTRIBUTION.

2. THE TRUSTEE HAS NOT COMPLIED WITH THE APPLICABLE STANDARD OF DISTRIBUTION OR HAS ABUSED THE DISCRETION REGARDING DISTRIBUTIONS.

B. TO THE EXTENT A TRUSTEE HAS NOT COMPLIED WITH THE APPLICABLE STANDARD OF DISTRIBUTION OR HAS ABUSED THE DISCRETION REGARDING DISTRIBUTIONS:

1. EXCEPT AS PROVIDED IN SECTION 14-10503, A DISTRIBUTION MAY BE ORDERED BY THE COURT TO SATISFY A JUDGMENT OR COURT ORDER AGAINST THE BENEFICIARY FOR SUPPORT OR MAINTENANCE OF THE BENEFICIARY'S CHILD.

2. THE COURT SHALL DIRECT THE TRUSTEE TO PAY TO THE CHILD AN AMOUNT AS IS EQUITABLE UNDER THE CIRCUMSTANCES BUT NOT MORE THAN THE AMOUNT THE TRUSTEE WOULD HAVE BEEN REQUIRED TO DISTRIBUTE TO OR FOR THE BENEFIT OF THE BENEFICIARY HAD THE TRUSTEE COMPLIED WITH THE STANDARD OR NOT ABUSED THE DISCRETION.

C. THIS SECTION DOES NOT LIMIT THE RIGHT OF A BENEFICIARY TO MAINTAIN A JUDICIAL PROCEEDING AGAINST A TRUSTEE FOR AN ABUSE OF DISCRETION OR FAILURE TO COMPLY WITH A STANDARD FOR DISTRIBUTION, PROVIDED THAT THIS RIGHT MAY NOT BE EXERCISED BY A CREDITOR OF THE BENEFICIARY.

D. WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION:

1. A CREDITOR OF A TRUST BENEFICIARY MAY NOT COMPEL A DISTRIBUTION FROM INSURANCE PROCEEDS PAYABLE TO THE TRUSTEE AS BENEFICIARY TO THE EXTENT STATE LAW EXEMPTS SUCH INSURANCE PROCEEDS FROM CREDITORS' CLAIMS IF IT HAD BEEN PAID DIRECTLY TO THE TRUST BENEFICIARY.

2. TO THE EXTENT THAT UNDER ARIZONA LAW LIFE INSURANCE PROCEEDS, POLICY CASH SURRENDER VALUES OR OTHER DISTRIBUTIONS OR PAYMENTS ARE EXEMPT FROM ATTACHMENT OR GARNISHMENT BY, EXECUTION ON OR OTHERWISE THE REACH OF CREDITORS, IF THE DEATH BENEFIT IS PAYABLE TO AN INDIVIDUAL BENEFICIARY, THE LIFE INSURANCE PROCEEDS, POLICY CASH SURRENDER VALUES OR OTHER DISTRIBUTIONS OR PAYMENTS ARE ALSO EXEMPT FROM ATTACHMENT OR GARNISHMENT BY, EXECUTION ON OR OTHERWISE THE REACH OF CREDITORS IF PAYABLE TO A TRUST FOR THAT INDIVIDUAL.

E. A CREDITOR OF A BENEFICIARY, WHETHER OR NOT THE BENEFICIARY IS ALSO A TRUSTEE OR COTRUSTEE, MAY NOT REACH THE BENEFICIARY'S BENEFICIAL INTEREST OR OTHERWISE COMPEL A DISTRIBUTION IF EITHER THE TRUSTEE'S DISCRETION TO MAKE DISTRIBUTIONS FOR THE TRUSTEE'S OWN BENEFIT IS PURELY DISCRETIONARY OR IS LIMITED BY AN ASCERTAINABLE STANDARD, INCLUDING A STANDARD RELATING TO THE BENEFICIARY'S HEALTH, EDUCATION, SUPPORT OR MAINTENANCE OR SIMILAR LANGUAGE WITHIN THE MEANING OF SECTION 2041(b)(1)(A) OF THE INTERNAL REVENUE CODE.

F. FOR THE PURPOSES OF THIS SECTION, "CHILD" INCLUDES ANY PERSON FOR WHOM AN ORDER OR JUDGMENT FOR CHILD SUPPORT HAS BEEN ENTERED IN THIS OR ANOTHER STATE.

14-10505. Creditor's claim against settlor

A. WHETHER OR NOT THE TERMS OF A TRUST CONTAIN A SPENDTHRIFT PROVISION, THE FOLLOWING RULES APPLY:

1. DURING THE LIFETIME OF THE SETTLOR, THE PROPERTY OF A REVOCABLE TRUST IS SUBJECT TO CLAIMS OF THE SETTLOR'S CREDITORS. IF A TRUST HAS MORE THAN ONE SETTLOR OR CONTRIBUTOR, THE AMOUNT THE CREDITOR OR ASSIGNEE OF A PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE SETTLOR'S INTEREST IN THE PORTION OF THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION. THIS PARAGRAPH DOES NOT ABROGATE OTHERWISE APPLICABLE LAWS RELATING TO COMMUNITY PROPERTY.

2. SUBJECT TO THE REQUIREMENTS OF THIS SECTION, WITH RESPECT TO AN IRREVOCABLE TRUST, A CREDITOR OR ASSIGNEE OF THE SETTLOR MAY REACH THE MAXIMUM AMOUNT THAT CAN BE DISTRIBUTED TO OR FOR THE SETTLOR'S BENEFIT. IF A

1 TRUST HAS MORE THAN ONE SETTLOR, THE AMOUNT THE CREDITOR OR ASSIGNEE OF A
2 PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE SETTLOR'S INTEREST IN THE
3 PORTION OF THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION. THIS
4 PARAGRAPH DOES NOT APPLY TO ANY TRUST FROM WHICH ANY DISTRIBUTION TO THE
5 SETTLOR CAN BE MADE PURSUANT TO THE EXERCISE OF A POWER OF APPOINTMENT HELD
6 BY A THIRD PARTY OR ABROGATE OTHERWISE APPLICABLE LAWS RELATING TO COMMUNITY
7 PROPERTY. A CREDITOR OF A SETTLOR:

8 (a) SHALL NOT REACH ANY TRUST PROPERTY BASED ON A TRUSTEE'S, TRUST
9 PROTECTOR'S OR THIRD PARTY'S POWER, WHETHER OR NOT DISCRETIONARY, TO PAY OR
10 REIMBURSE THE SETTLOR FOR ANY INCOME TAX ON TRUST INCOME OR TRUST PRINCIPAL
11 THAT IS PAYABLE BY THE SETTLOR UNDER THE LAW IMPOSING THE TAX OR TO PAY THE
12 TAX DIRECTLY TO ANY TAXING AUTHORITY.

13 (b) IS NOT ENTITLED TO ANY PAYMENT OR REIMBURSEMENT THAT IS TO BE MADE
14 DIRECTLY TO ANY TAXING AUTHORITY

15 3. AFTER THE DEATH OF A SETTLOR, AND SUBJECT TO THE SETTLOR'S RIGHT TO
16 DIRECT THE SOURCE FROM WHICH LIABILITIES WILL BE PAID, THE PROPERTY OF A
17 TRUST THAT WAS REVOCABLE AT THE SETTLOR'S DEATH IS SUBJECT TO CLAIMS OF THE
18 SETTLOR'S CREDITORS, COSTS OF ADMINISTRATION OF THE SETTLOR'S ESTATE, THE
19 EXPENSES OF THE SETTLOR'S FUNERAL AND DISPOSAL OF REMAINS AND STATUTORY
20 ALLOWANCES TO A SURVIVING SPOUSE AND CHILDREN TO THE EXTENT THE SETTLOR'S
21 PROBATE ESTATE IS INADEQUATE TO SATISFY THOSE CLAIMS, COSTS, EXPENSES AND
22 ALLOWANCES, EXCEPT TO THE EXTENT THAT STATE OR FEDERAL LAW EXEMPTS ANY
23 PROPERTY OF THE TRUST FROM THESE CLAIMS, COSTS, EXPENSES OR ALLOWANCES.

24 B. FOR THE PURPOSES OF THIS SECTION:

25 1. DURING THE PERIOD THE POWER MAY BE EXERCISED, THE HOLDER OF A POWER
26 OF WITHDRAWAL IS TREATED IN THE SAME MANNER AS THE SETTLOR OF A REVOCABLE
27 TRUST TO THE EXTENT OF THE PROPERTY SUBJECT TO THE POWER.

28 2. ON THE LAPSE, RELEASE OR WAIVER OF A POWER OF WITHDRAWAL, THE
29 HOLDER IS TREATED AS THE SETTLOR OF THE TRUST ONLY TO THE EXTENT THE VALUE OF
30 THE PROPERTY AFFECTED BY THE LAPSE, RELEASE OR WAIVER EXCEEDS THE GREATER OF
31 THE AMOUNT SPECIFIED IN SECTION 2041(b)(2) OR 2514(e) OF THE INTERNAL REVENUE
32 CODE, OR SECTION 2503(b) OF THE INTERNAL REVENUE CODE. ON THE LAPSE, RELEASE
33 OR WAIVER OF A POWER OF WITHDRAWAL IN THE CASE OF A TRUST CREATED UNDER
34 SECTION 2503(c) OF THE INTERNAL REVENUE CODE, THE HOLDER WILL NOT BE TREATED
35 AS THE SETTLOR OF THE TRUST.

36 C. FOR THE PURPOSES OF THIS SECTION, A TRUST SETTLED OR ESTABLISHED BY
37 A CORPORATION, PROFESSIONAL CORPORATION, PARTNERSHIP, LIMITED LIABILITY
38 COMPANY, GOVERNMENTAL ENTITY, TRUST, FOUNDATION OR OTHER ENTITY IS NOT DEEMED
39 TO BE SETTLED OR ESTABLISHED BY ITS DIRECTORS, OFFICERS, SHAREHOLDERS,
40 PARTNERS, MEMBERS, MANAGERS, EMPLOYEES, BENEFICIARIES OR AGENTS.

41 D. FOR THE PURPOSES OF THIS SECTION, AMOUNTS CONTRIBUTED TO A TRUST BY
42 A CORPORATION, PROFESSIONAL CORPORATION, PARTNERSHIP, LIMITED LIABILITY
43 COMPANY, GOVERNMENTAL ENTITY, TRUST, FOUNDATION OR OTHER ENTITY ARE NOT
44 DEEMED TO HAVE BEEN CONTRIBUTED BY ITS DIRECTORS, OFFICERS, SHAREHOLDERS,
45 PARTNERS, EMPLOYEES, BENEFICIARIES OR AGENTS. POWERS, DUTIES OR

1 RESPONSIBILITIES GRANTED TO OR RESERVED BY THE SETTLOR PURSUANT TO THE TRUST
2 AND ANY ACTIONS OR OMISSIONS TAKEN PURSUANT TO THE TRUST ARE DEEMED TO BE THE
3 POWERS, RESPONSIBILITIES, DUTIES, ACTIONS OR OMISSIONS OF THE SETTLOR AND NOT
4 THOSE OF ITS DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, MEMBERS, MANAGERS,
5 EMPLOYEES, BENEFICIARIES OR AGENTS.

6 E. FOR THE PURPOSES OF THIS SECTION, AMOUNTS CONTRIBUTED TO AN INTER
7 VIVOS MARITAL TRUST THAT IS TREATED AS QUALIFIED TERMINABLE INTEREST PROPERTY
8 UNDER SECTION 2523(f) OF THE INTERNAL REVENUE CODE OR TO AN INTER VIVOS
9 MARITAL TRUST THAT IS TREATED AS A GENERAL POWER OF APPOINTMENT TRUST UNDER
10 SECTION 2523(e) OF THE INTERNAL REVENUE CODE AND OVER WHICH THE BENEFICIARY
11 HOLDS A LIMITED POWER OF APPOINTMENT OR A GENERAL POWER OF APPOINTMENT
12 EXERCISABLE IN FAVOR OF THE HOLDER'S ESTATE, OR BOTH, ARE NOT DEEMED TO HAVE
13 BEEN CONTRIBUTED BY THE SETTLOR EVEN IF THE SETTLOR IS A BENEFICIARY OF THE
14 TRUST FOLLOWING THE DEATH OF THE BENEFICIARY'S SPOUSE.

15 F. SUBSECTIONS C AND D DO NOT APPLY TO:

16 1. A TRUST THAT HAS NO VALID BUSINESS PURPOSE AND THAT HAS AS ITS
17 PRINCIPAL PURPOSE THE EVASION OF THE CLAIMS OF THE CREDITORS OF THE PERSONS
18 OR ENTITIES LISTED IN THOSE SUBSECTIONS.

19 2. A TRUST THAT WOULD BE TREATED AS A GRANTOR TRUST PURSUANT TO
20 SECTIONS 671 THROUGH 679 OF THE INTERNAL REVENUE CODE. THIS PARAGRAPH DOES
21 NOT APPLY TO A QUALIFIED SUBCHAPTER S TRUST THAT IS TREATED AS A GRANTOR
22 TRUST SOLELY BY APPLICATION OF SECTION 1361(d) OF THE INTERNAL REVENUE CODE.

23 14-10506. Overdue distribution; definition

24 A. WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION, A CREDITOR
25 OR ASSIGNEE OF A BENEFICIARY MAY REACH A MANDATORY DISTRIBUTION OF INCOME OR
26 PRINCIPAL, INCLUDING A DISTRIBUTION ON TERMINATION OF THE TRUST, IF THE
27 TRUSTEE HAS NOT MADE THE DISTRIBUTION TO THE BENEFICIARY WITHIN A REASONABLE
28 TIME AFTER THE MANDATED DISTRIBUTION DATE UNLESS THE TERMS OF THE TRUST
29 EXPRESSLY AUTHORIZE THE TRUSTEE TO DELAY THE DISTRIBUTION TO PROTECT THE
30 BENEFICIARY'S INTEREST IN THE DISTRIBUTION.

31 B. FOR THE PURPOSES OF THIS SECTION, "MANDATORY DISTRIBUTION" MEANS A
32 DISTRIBUTION OF INCOME OR PRINCIPAL THAT THE TRUSTEE IS REQUIRED TO MAKE TO A
33 BENEFICIARY UNDER THE TERMS OF THE TRUST, INCLUDING A DISTRIBUTION ON
34 TERMINATION OF THE TRUST. MANDATORY DISTRIBUTION DOES NOT INCLUDE A
35 DISTRIBUTION THAT IS SUBJECT TO THE EXERCISE OF THE TRUSTEE'S DISCRETION EVEN
36 IF:

37 1. THE DISCRETION IS EXPRESSED IN THE FORM OF A STANDARD OF
38 DISTRIBUTION.

39 2. THE TERMS OF THE TRUST AUTHORIZING A DISTRIBUTION COUPLE LANGUAGE
40 OF DISCRETION WITH LANGUAGE OF DIRECTION.

41 14-10507. Personal obligations of trustee

42 TRUST PROPERTY IS NOT SUBJECT TO PERSONAL OBLIGATIONS OF THE TRUSTEE,
43 EVEN IF THE TRUSTEE BECOMES INSOLVENT OR BANKRUPT.

ARTICLE 6. REVOCABLE TRUSTS

14-10601. Blank

14-10602. Revocation or amendment of revocable trust

A. UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE THAT THE TRUST IS IRREVOCABLE, A SETTLOR MAY REVOKE OR AMEND THE TRUST SUBJECT TO ANY LIMITATIONS PRESCRIBED IN THE TERMS OF THE TRUST.

B. IF A REVOCABLE TRUST IS CREATED OR FUNDED BY MORE THAN ONE SETTLOR:

1. TO THE EXTENT THE TRUST CONSISTS OF COMMUNITY PROPERTY, THE TRUST MAY BE REVOKED BY EITHER SPOUSE ACTING ALONE AS TO THAT SPOUSE'S SHARE OF THE COMMUNITY PROPERTY BUT MAY BE AMENDED ONLY BY JOINT ACTION OF BOTH SPOUSES.

2. TO THE EXTENT THE TRUST CONSISTS OF PROPERTY OTHER THAN COMMUNITY PROPERTY, EACH SETTLOR MAY REVOKE OR AMEND THE TRUST WITH REGARD THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION.

C. THE SETTLOR MAY REVOKE OR AMEND A REVOCABLE TRUST EITHER:

1. BY SUBSTANTIAL COMPLIANCE WITH A METHOD PROVIDED IN THE TERMS OF THE TRUST.

2. IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR THE METHOD PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE EXCLUSIVE, BY EITHER:

(a) A LATER WILL OR CODICIL THAT EXPRESSLY REFERS TO THE TRUST OR SPECIFICALLY DEVISES PROPERTY THAT WOULD OTHERWISE HAVE PASSED ACCORDING TO THE TERMS OF THE TRUST.

(b) ANY OTHER WRITING SIGNED BY THE SETTLOR MANIFESTING CLEAR AND CONVINCING EVIDENCE OF THE SETTLOR'S INTENT.

D. ON REVOCATION OF A REVOCABLE TRUST, THE TRUSTEE SHALL DELIVER THE TRUST PROPERTY AS THE SETTLOR DIRECTS.

E. A SETTLOR'S POWERS WITH RESPECT TO REVOCATION, AMENDMENT OR DISTRIBUTION OF TRUST PROPERTY MAY BE EXERCISED BY AN AGENT UNDER A POWER OF ATTORNEY ONLY TO THE EXTENT EXPRESSLY AUTHORIZED BY THE TERMS OF THE TRUST OR, IF THE TERMS OF THE TRUST DO NOT PROHIBIT AN AGENT FROM EXERCISING POWERS ON BEHALF OF THE SETTLOR, TO THE EXTENT EXPRESSLY AUTHORIZED UNDER THE POWER OF ATTORNEY. IF AN AGENT IS NOT SO AUTHORIZED AND THE TERMS OF THE TRUST DO NOT PROHIBIT A CONSERVATOR FROM EXERCISING POWERS ON BEHALF OF A SETTLOR, A SETTLOR'S POWER TO REVOKE, AMEND OR DISTRIBUTE MAY BE EXERCISED BY THE SETTLOR'S CONSERVATOR WITH THE APPROVAL OF THE COURT SUPERVISING THE CONSERVATORSHIP OR BY THE SETTLOR'S GUARDIAN WITH THE APPROVAL OF THE COURT SUPERVISING THE GUARDIANSHIP IF AN AGENT IS NOT SO AUTHORIZED AND A CONSERVATOR HAS NOT BEEN APPOINTED.

F. A TRUSTEE WHO DOES NOT KNOW THAT A TRUST HAS BEEN REVOKED OR AMENDED IS NOT LIABLE TO THE SETTLOR OR SETTLOR'S SUCCESSORS IN INTEREST FOR DISTRIBUTIONS MADE AND OTHER ACTIONS TAKEN ON THE ASSUMPTION THAT THE TRUST HAD NOT BEEN AMENDED OR REVOKED.

14-10603. Settlor's powers; powers of withdrawal

A. WHILE AND TO THE EXTENT A TRUST IS REVOCABLE BY THE SETTLOR, THE RIGHTS OF THE BENEFICIARIES ARE SUBJECT TO THE CONTROL OF, AND THE DUTIES OF THE TRUSTEE ARE OWED EXCLUSIVELY TO, THE SETTLOR.

1 B. DURING THE PERIOD A POWER OF WITHDRAWAL MAY BE EXERCISED, THE
2 HOLDER OF THE POWER HAS THE RIGHTS OF A SETTLOR OF A REVOCABLE TRUST UNDER
3 THIS SECTION TO THE EXTENT OF THE PROPERTY SUBJECT TO THE POWER.

4 14-10604. Limitation on actions contesting validity or
5 revocable trust; distribution of trust property

6 A. A PERSON MAY COMMENCE A JUDICIAL PROCEEDING TO CONTEST THE VALIDITY
7 OF A TRUST THAT WAS REVOCABLE AT THE SETTLOR'S DEATH WITHIN THE EARLIER OF:

8 1. ONE YEAR AFTER THE SETTLOR'S DEATH.

9 2. FOUR MONTHS AFTER THE TRUSTEE SENT THE PERSON A COPY OF THE TRUST
10 INSTRUMENT AND A NOTICE INFORMING THE PERSON OF THE TRUST'S EXISTENCE, OF THE
11 TRUSTEE'S NAME AND ADDRESS AND OF THE TIME ALLOWED FOR COMMENCING A
12 PROCEEDING.

13 B. ON THE DEATH OF THE SETTLOR OF A TRUST THAT WAS REVOCABLE AT THE
14 SETTLOR'S DEATH, THE TRUSTEE MAY PROCEED TO DISTRIBUTE THE TRUST PROPERTY IN
15 ACCORDANCE WITH THE TERMS OF THE TRUST. THE TRUSTEE IS NOT SUBJECT TO
16 LIABILITY FOR DOING SO UNLESS EITHER:

17 1. THE TRUSTEE KNOWS OF A PENDING JUDICIAL PROCEEDING CONTESTING THE
18 VALIDITY OF THE TRUST.

19 2. A POTENTIAL CONTESTANT HAS NOTIFIED THE TRUSTEE IN WRITING OF A
20 POSSIBLE JUDICIAL PROCEEDING TO CONTEST THE TRUST AND A JUDICIAL PROCEEDING
21 IS COMMENCED WITHIN SIXTY DAYS AFTER THE CONTESTANT SENT THE NOTIFICATION.

22 C. A BENEFICIARY OF A TRUST THAT IS DETERMINED TO HAVE BEEN INVALID IS
23 LIABLE TO RETURN ANY DISTRIBUTION RECEIVED EXCEPT TO THE EXTENT THAT THE
24 BENEFICIARY IS A BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE.

25 ARTICLE 7. OFFICE OF TRUSTEE

26 14-10701. Accepting or declining trusteeship

27 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION C, A PERSON DESIGNATED
28 AS TRUSTEE ACCEPTS THE TRUSTEESHIP EITHER:

29 1. BY SUBSTANTIALLY COMPLYING WITH A METHOD OF ACCEPTANCE PROVIDED IN
30 THE TERMS OF THE TRUST.

31 2. IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR THE METHOD
32 PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE EXCLUSIVE, BY ACCEPTING DELIVERY
33 OF THE TRUST PROPERTY, EXERCISING POWERS OR PERFORMING DUTIES AS TRUSTEE OR
34 OTHERWISE INDICATING ACCEPTANCE OF THE TRUSTEESHIP.

35 B. A PERSON DESIGNATED AS TRUSTEE WHO HAS NOT YET ACCEPTED THE
36 TRUSTEESHIP MAY REJECT THE TRUSTEESHIP. A DESIGNATED TRUSTEE WHO DOES NOT
37 ACCEPT THE TRUSTEESHIP WITHIN A REASONABLE TIME AFTER KNOWING OF THE
38 DESIGNATION IS DEEMED TO HAVE REJECTED THE TRUSTEESHIP.

39 C. A PERSON DESIGNATED AS TRUSTEE, WITHOUT ACCEPTING THE TRUSTEESHIP,
40 MAY:

41 1. ACT TO PRESERVE THE TRUST PROPERTY IF, WITHIN A REASONABLE TIME
42 AFTER ACTING, THE PERSON SENDS A REJECTION OF THE TRUSTEESHIP TO THE SETTLOR
43 OR, IF THE SETTLOR IS DEAD OR LACKS CAPACITY, TO A QUALIFIED BENEFICIARY.

44 2. INSPECT OR INVESTIGATE TRUST PROPERTY TO DETERMINE POTENTIAL
45 LIABILITY UNDER ENVIRONMENTAL OR OTHER LAW OR FOR ANY OTHER PURPOSE.

14-10702. Trustee's bond

A. A TRUSTEE SHALL GIVE BOND TO SECURE PERFORMANCE OF THE TRUSTEE'S DUTIES ONLY IF THE COURT FINDS THAT A BOND IS NEEDED TO PROTECT THE INTERESTS OF THE BENEFICIARIES OR IS REQUIRED BY THE TERMS OF THE TRUST AND THE COURT HAS NOT DISPENSED WITH THE REQUIREMENT.

B. THE COURT MAY SPECIFY THE AMOUNT OF A BOND, ITS LIABILITIES AND WHETHER SURETIES ARE NECESSARY. THE COURT MAY MODIFY OR TERMINATE A BOND AT ANY TIME.

C. NOTWITHSTANDING THE TERMS OF THE TRUST, THE FOLLOWING ARE NOT REQUIRED TO GIVE A BOND:

1. A NATIONAL BANKING ASSOCIATION.

2. A HOLDER OF A BANKING PERMIT UNDER THE LAWS OF THIS STATE.

3. A SAVINGS AND LOAN ASSOCIATION AUTHORIZED TO CONDUCT TRUST BUSINESS IN THIS STATE.

4. A TITLE INSURANCE COMPANY QUALIFIED TO DO BUSINESS UNDER THE LAWS OF THIS STATE.

5. A TRUST COMPANY HOLDING A CERTIFICATE TO ENGAGE IN TRUST BUSINESS FROM THE STATE SUPERINTENDENT OF BANKS.

6. THE PUBLIC FIDUCIARY.

14-10703. Cotrustees

A. COTRUSTEES WHO ARE UNABLE TO REACH A UNANIMOUS DECISION MAY ACT BY MAJORITY DECISION.

B. IF A VACANCY OCCURS IN A COTRUSTEESHIP, THE REMAINING COTRUSTEES MAY ACT FOR THE TRUST.

C. A COTRUSTEE MUST PARTICIPATE IN THE PERFORMANCE OF A TRUSTEE'S FUNCTION UNLESS THE COTRUSTEE IS UNAVAILABLE TO PERFORM THE FUNCTION BECAUSE OF ABSENCE, ILLNESS, DISQUALIFICATION UNDER OTHER LAW OR OTHER TEMPORARY INCAPACITY OR THE COTRUSTEE HAS PROPERLY DELEGATED THE PERFORMANCE OF THE FUNCTION TO ANOTHER TRUSTEE.

D. IF A COTRUSTEE IS UNAVAILABLE TO PERFORM DUTIES BECAUSE OF ABSENCE, ILLNESS, DISQUALIFICATION UNDER OTHER LAW OR OTHER TEMPORARY INCAPACITY, AND PROMPT ACTION IS NECESSARY TO ACHIEVE THE PURPOSES OF THE TRUST OR TO AVOID INJURY TO THE TRUST PROPERTY, THE REMAINING COTRUSTEE OR A MAJORITY OF THE REMAINING COTRUSTEES MAY ACT FOR THE TRUST.

E. A TRUSTEE MAY DELEGATE TO A COTRUSTEE THE PERFORMANCE OF A FUNCTION UNLESS THE TERMS OF THE TRUST PROVIDE THAT THE TRUSTEES PERFORM JOINTLY. UNLESS A DELEGATION WAS IRREVOCABLE, A TRUSTEE MAY REVOKE A DELEGATION PREVIOUSLY MADE.

F. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION G, A TRUSTEE WHO DOES NOT JOIN IN AN ACTION OF ANOTHER TRUSTEE IS NOT LIABLE FOR THE ACTION.

G. EACH TRUSTEE SHALL EXERCISE REASONABLE CARE TO:

1. PREVENT A COTRUSTEE FROM COMMITTING A MATERIAL BREACH OF TRUST.

2. COMPEL A COTRUSTEE TO REDRESS A MATERIAL BREACH OF TRUST.

H. A DISSENTING TRUSTEE WHO JOINS IN AN ACTION AT THE DIRECTION OF THE MAJORITY OF THE TRUSTEES AND WHO NOTIFIED ANY COTRUSTEE OF THE DISSENT AT OR

BEFORE THE TIME OF THE ACTION IS NOT LIABLE FOR THE ACTION UNLESS THE ACTION IS A MATERIAL BREACH OF TRUST.

14-10704. Vacancy in trusteeship; appointment of successor

A. A VACANCY IN A TRUSTEESHIP OCCURS IF:

1. A PERSON DESIGNATED AS TRUSTEE REJECTS THE TRUSTEESHIP.
2. A PERSON DESIGNATED AS TRUSTEE CANNOT BE IDENTIFIED OR DOES NOT EXIST.

3. A TRUSTEE RESIGNS.

4. A TRUSTEE IS DISQUALIFIED OR REMOVED.

5. A TRUSTEE DIES.

6. A GUARDIAN OR CONSERVATOR IS APPOINTED FOR AN INDIVIDUAL SERVING AS TRUSTEE.

B. IF ONE OR MORE COTRUSTEES REMAIN IN OFFICE, A VACANCY IN A TRUSTEESHIP NEED NOT BE FILLED. A VACANCY IN A TRUSTEESHIP MUST BE FILLED IF THE TRUST HAS NO REMAINING TRUSTEE.

C. A VACANCY IN A TRUSTEESHIP OF A NONCHARITABLE TRUST THAT IS REQUIRED TO BE FILLED MUST BE FILLED IN THE FOLLOWING ORDER OF PRIORITY:

1. BY A PERSON DESIGNATED IN THE TERMS OF THE TRUST TO ACT AS SUCCESSOR TRUSTEE OR A PERSON WHO IS APPOINTED BY A PERSON WHO HAS AUTHORITY IN THE TRUST INSTRUMENT TO APPOINT A SUCCESSOR TRUSTEE.

2. BY A PERSON APPOINTED BY UNANIMOUS AGREEMENT OF THE QUALIFIED BENEFICIARIES.

3. BY A PERSON APPOINTED BY THE COURT.

D. A VACANCY IN A TRUSTEESHIP OF A CHARITABLE TRUST THAT IS REQUIRED TO BE FILLED MUST BE FILLED IN THE FOLLOWING ORDER OF PRIORITY:

1. BY A PERSON DESIGNATED IN THE TERMS OF THE TRUST TO ACT AS SUCCESSOR TRUSTEE.

2. BY A PERSON SELECTED BY THE CHARITABLE ORGANIZATIONS EXPRESSLY DESIGNATED TO RECEIVE DISTRIBUTIONS UNDER THE TERMS OF THE TRUST.

3. BY A PERSON APPOINTED BY THE COURT.

E. WHETHER OR NOT A VACANCY IN A TRUSTEESHIP EXISTS OR IS REQUIRED TO BE FILLED, THE COURT MAY APPOINT AN ADDITIONAL TRUSTEE OR SPECIAL FIDUCIARY WHENEVER THE COURT CONSIDERS THE APPOINTMENT NECESSARY FOR THE ADMINISTRATION OF THE TRUST.

14-10705. Resignation of trustee

A. A TRUSTEE MAY RESIGN EITHER:

1. UNLESS THE TRUST INSTRUMENT PROVIDES OTHERWISE, ON AT LEAST THIRTY DAYS' NOTICE TO THE QUALIFIED BENEFICIARIES, THE SETTLOR, IF LIVING, AND ALL COTRUSTEES.

2. WITH THE APPROVAL OF THE COURT.

B. IN APPROVING A RESIGNATION, THE COURT MAY ISSUE ORDERS AND IMPOSE CONDITIONS REASONABLY NECESSARY FOR THE PROTECTION OF THE TRUST PROPERTY.

C. ANY LIABILITY OF A RESIGNING TRUSTEE OR OF ANY SURETIES ON THE TRUSTEE'S BOND FOR ACTS OR OMISSIONS OF THE TRUSTEE IS NOT DISCHARGED OR AFFECTED BY THE TRUSTEE'S RESIGNATION.

14-10706. Removal of trustee

A. THE SETTLOR, A COTRUSTEE OR A BENEFICIARY MAY REQUEST THE COURT TO REMOVE A TRUSTEE OR A TRUSTEE MAY BE REMOVED BY THE COURT ON ITS OWN INITIATIVE.

B. THE COURT MAY REMOVE A TRUSTEE IF:

1. THE TRUSTEE HAS COMMITTED A MATERIAL BREACH OF TRUST.

2. LACK OF COOPERATION AMONG COTRUSTEES SUBSTANTIALLY IMPAIRS THE ADMINISTRATION OF THE TRUST.

3. BECAUSE OF UNFITNESS, UNWILLINGNESS OR PERSISTENT FAILURE OF THE TRUSTEE TO ADMINISTER THE TRUST FOR THE BENEFIT OF THE BENEFICIARIES, THE COURT DETERMINES THAT REMOVAL OF THE TRUSTEE BEST SERVES THE INTERESTS OF THE BENEFICIARIES.

4. THERE HAS BEEN A SUBSTANTIAL CHANGE OF CIRCUMSTANCES OR REMOVAL IS REQUESTED BY ALL OF THE QUALIFIED BENEFICIARIES, THE COURT FINDS THAT REMOVAL OF THE TRUSTEE BEST SERVES THE INTERESTS OF ALL OF THE BENEFICIARIES AND IS NOT INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST AND A SUITABLE COTRUSTEE OR SUCCESSOR TRUSTEE IS AVAILABLE.

C. PENDING A FINAL DECISION ON A REQUEST TO REMOVE A TRUSTEE, OR IN LIEU OF OR IN ADDITION TO REMOVING A TRUSTEE, THE COURT MAY ORDER APPROPRIATE RELIEF UNDER SECTION 14-11001, SUBSECTION B AS MAY BE NECESSARY TO PROTECT THE TRUST PROPERTY OR THE INTERESTS OF THE BENEFICIARIES.

14-10707. Delivery of property by former trustee

A. UNLESS A COTRUSTEE REMAINS IN OFFICE OR THE COURT OTHERWISE ORDERS, AND UNTIL THE TRUST PROPERTY IS DELIVERED TO A SUCCESSOR TRUSTEE OR OTHER PERSON ENTITLED TO IT, A TRUSTEE WHO HAS RESIGNED OR BEEN REMOVED HAS THE DUTIES OF A TRUSTEE AND THE POWERS NECESSARY TO PROTECT THE TRUST PROPERTY.

B. A TRUSTEE WHO HAS RESIGNED OR BEEN REMOVED SHALL PROCEED EXPEDITIOUSLY TO DELIVER THE TRUST PROPERTY IN THE TRUSTEE'S POSSESSION TO THE COTRUSTEE, SUCCESSOR TRUSTEE OR OTHER PERSON ENTITLED TO IT.

14-10708. Compensation of trustee

A. IF THE TERMS OF A TRUST DO NOT SPECIFY THE TRUSTEE'S COMPENSATION, A TRUSTEE IS ENTITLED TO COMPENSATION THAT IS REASONABLE UNDER THE CIRCUMSTANCES.

B. IF THE TERMS OF A TRUST SPECIFY THE TRUSTEE'S COMPENSATION OR REFER TO ANOTHER ASCERTAINABLE SOURCE FOR DETERMINING THAT COMPENSATION, THE TRUSTEE IS ENTITLED TO BE COMPENSATED AS SPECIFIED, BUT THE COURT MAY ALLOW MORE OR LESS COMPENSATION IF EITHER:

1. THE DUTIES OF THE TRUSTEE ARE SUBSTANTIALLY DIFFERENT FROM THOSE CONTEMPLATED WHEN THE TRUST WAS CREATED.

2. THE COMPENSATION SPECIFIED BY THE TERMS OF THE TRUST WOULD BE UNREASONABLY LOW OR HIGH.

14-10709. Reimbursement of expenses

A. A TRUSTEE IS ENTITLED TO BE REIMBURSED OUT OF THE TRUST PROPERTY, WITH REASONABLE INTEREST, FOR:

1 1. EXPENSES THAT WERE PROPERLY INCURRED IN THE ADMINISTRATION OF THE
2 TRUST.

3 2. TO THE EXTENT NECESSARY TO PREVENT UNJUST ENRICHMENT OF THE TRUST,
4 EXPENSES THAT WERE NOT PROPERLY INCURRED IN THE ADMINISTRATION OF THE TRUST.

5 B. AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST
6 GIVES RISE TO A LIEN AGAINST TRUST PROPERTY TO SECURE REIMBURSEMENT WITH
7 REASONABLE INTEREST.

8 ARTICLE 8. DUTIES AND POWERS OF TRUSTEE AND TRUST PROTECTOR

9 14-10801. Duty to administer trust

10 ON ACCEPTANCE OF A TRUSTEESHIP, THE TRUSTEE SHALL ADMINISTER THE TRUST
11 IN GOOD FAITH, IN ACCORDANCE WITH ITS TERMS AND PURPOSES AND THE INTERESTS OF
12 THE BENEFICIARIES AND IN ACCORDANCE WITH THIS CHAPTER.

13 14-10802. Duty of loyalty

14 A. A TRUSTEE SHALL ADMINISTER THE TRUST SOLELY IN THE INTERESTS OF THE
15 BENEFICIARIES.

16 B. SUBJECT TO THE RIGHTS OF PERSONS DEALING WITH OR ASSISTING THE
17 TRUSTEE AS PROVIDED IN SECTION 14-11012, A SALE, ENCUMBRANCE OR OTHER
18 TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY ENTERED
19 INTO BY THE TRUSTEE FOR THE TRUSTEE'S OWN PERSONAL ACCOUNT OR THAT IS
20 OTHERWISE AFFECTED BY A CONFLICT BETWEEN THE TRUSTEE'S FIDUCIARY AND PERSONAL
21 INTERESTS IS VOIDABLE BY A BENEFICIARY AFFECTED BY THE TRANSACTION UNLESS
22 EITHER:

23 1. THE TRANSACTION WAS AUTHORIZED BY THE TERMS OF THE TRUST.

24 2. THE TRANSACTION WAS APPROVED BY THE COURT.

25 3. THE BENEFICIARY DID NOT COMMENCE A JUDICIAL PROCEEDING WITHIN THE
26 TIME ALLOWED BY SECTION 14-11005.

27 4. THE BENEFICIARY CONSENTED TO THE TRUSTEE'S CONDUCT, RATIFIED THE
28 TRANSACTION OR RELEASED THE TRUSTEE IN COMPLIANCE WITH SECTION 14-11009.

29 5. THE TRANSACTION INVOLVES A CONTRACT ENTERED INTO OR CLAIM ACQUIRED
30 BY THE TRUSTEE BEFORE THE PERSON BECAME OR CONTEMPLATED BECOMING TRUSTEE.

31 C. A SALE, ENCUMBRANCE OR OTHER TRANSACTION INVOLVING THE INVESTMENT
32 OR MANAGEMENT OF TRUST PROPERTY IS PRESUMED TO BE AFFECTED BY A CONFLICT
33 BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF IT IS ENTERED INTO BY THE TRUSTEE
34 WITH:

35 1. THE TRUSTEE'S SPOUSE.

36 2. THE TRUSTEE'S DESCENDANTS, SIBLINGS OR PARENTS OR THEIR SPOUSES.

37 3. AN AGENT OR ATTORNEY OF THE TRUSTEE.

38 4. A CORPORATION OR OTHER PERSON OR ENTERPRISE IN WHICH THE TRUSTEE,
39 OR A PERSON THAT OWNS A SIGNIFICANT INTEREST IN THE TRUSTEE, HAS AN INTEREST
40 THAT MIGHT AFFECT THE TRUSTEE'S BEST JUDGMENT.

41 D. A TRANSACTION BETWEEN A TRUSTEE AND A BENEFICIARY THAT DOES NOT
42 CONCERN TRUST PROPERTY BUT THAT OCCURS DURING THE EXISTENCE OF THE TRUST OR
43 WHILE THE TRUSTEE RETAINS SIGNIFICANT INFLUENCE OVER THE BENEFICIARY AND FROM
44 WHICH THE TRUSTEE OBTAINS AN ADVANTAGE IS VOIDABLE BY THE BENEFICIARY UNLESS
45 THE TRUSTEE ESTABLISHES THAT THE TRANSACTION WAS FAIR TO THE BENEFICIARY.

1 E. A TRANSACTION NOT CONCERNING TRUST PROPERTY IN WHICH THE TRUSTEE
2 ENGAGES IN THE TRUSTEE'S INDIVIDUAL CAPACITY INVOLVES A CONFLICT BETWEEN
3 PERSONAL AND FIDUCIARY INTERESTS IF THE TRANSACTION CONCERNS AN OPPORTUNITY
4 PROPERLY BELONGING TO THE TRUST.

5 F. AN INVESTMENT BY A TRUSTEE IN SECURITIES OF AN INVESTMENT COMPANY
6 OR INVESTMENT TRUST TO WHICH THE TRUSTEE, OR ITS AFFILIATE, PROVIDES SERVICES
7 IN A CAPACITY OTHER THAN AS TRUSTEE IS NOT PRESUMED TO BE AFFECTED BY A
8 CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE INVESTMENT OTHERWISE
9 COMPLIES WITH THE PRUDENT INVESTOR RULE OF ARTICLE 9 OF THIS CHAPTER. THE
10 TRUSTEE MAY BE COMPENSATED BY THE INVESTMENT COMPANY OR INVESTMENT TRUST FOR
11 PROVIDING THOSE SERVICES OUT OF FEES CHARGED TO THE TRUST IF THE TRUSTEE AT
12 LEAST ANNUALLY NOTIFIES THE PERSONS ENTITLED UNDER SECTION 14-10813 TO
13 RECEIVE A COPY OF THE TRUSTEE'S ANNUAL REPORT THAT THE BANK OR TRUST COMPANY
14 PROVIDES SERVICES FOR AND RECEIVES FEES FROM THE INVESTMENT COMPANY OR
15 INVESTMENT TRUST. THIS NOTIFICATION MAY BE MADE IN THE TRUSTEE'S STATEMENTS
16 OF THE FIDUCIARY ACCOUNT.

17 G. IN VOTING SHARES OF STOCK OR IN EXERCISING POWERS OF CONTROL OVER
18 SIMILAR INTERESTS IN OTHER FORMS OF ENTERPRISE, THE TRUSTEE SHALL ACT IN THE
19 BEST INTERESTS OF THE BENEFICIARIES. IF THE TRUST IS THE SOLE OWNER OF A
20 CORPORATION OR OTHER FORM OF ENTERPRISE, THE TRUSTEE SHALL ELECT OR APPOINT
21 DIRECTORS OR OTHER MANAGERS WHO WILL MANAGE THE CORPORATION OR ENTERPRISE IN
22 THE BEST INTERESTS OF THE BENEFICIARIES.

23 H. THIS SECTION DOES NOT PRECLUDE THE FOLLOWING TRANSACTIONS, IF FAIR
24 TO THE BENEFICIARIES:

25 1. AN AGREEMENT BETWEEN A TRUSTEE AND A BENEFICIARY RELATING TO THE
26 APPOINTMENT OR COMPENSATION OF THE TRUSTEE.

27 2. PAYMENT OF REASONABLE COMPENSATION TO THE TRUSTEE.

28 3. A TRANSACTION BETWEEN A TRUST AND ANOTHER TRUST, DECEDENT'S ESTATE
29 OR CONSERVATORSHIP OF WHICH THE TRUSTEE IS A FIDUCIARY OR IN WHICH A
30 BENEFICIARY HAS AN INTEREST.

31 4. A DEPOSIT OF TRUST MONEY IN A REGULATED FINANCIAL SERVICE
32 INSTITUTION OPERATED BY THE TRUSTEE.

33 5. AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST.

34 I. THE COURT MAY APPOINT A SPECIAL FIDUCIARY TO MAKE A DECISION WITH
35 RESPECT TO ANY PROPOSED TRANSACTION THAT MAY VIOLATE THIS SECTION IF ENTERED
36 INTO BY THE TRUSTEE.

37 14-10803. Impartiality

38 IF A TRUST HAS TWO OR MORE BENEFICIARIES, THE TRUSTEE SHALL ACT
39 IMPARTIALLY IN INVESTING, MANAGING AND DISTRIBUTING THE TRUST PROPERTY,
40 GIVING DUE REGARD TO THE BENEFICIARIES' RESPECTIVE INTERESTS.

41 14-10804. Prudent administration

42 A TRUSTEE SHALL ADMINISTER THE TRUST AS A PRUDENT PERSON WOULD, BY
43 CONSIDERING THE PURPOSES, TERMS, DISTRIBUTIONAL REQUIREMENTS AND OTHER
44 CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD, THE TRUSTEE SHALL
45 EXERCISE REASONABLE CARE, SKILL AND CAUTION.

1 14-10805. Costs of administration

2 IN ADMINISTERING A TRUST, THE TRUSTEE MAY INCUR ONLY COSTS THAT ARE
3 REASONABLE IN RELATION TO THE TRUST PROPERTY, THE PURPOSES OF THE TRUST AND
4 THE SKILLS OF THE TRUSTEE.

5 14-10806. Trustee's skills

6 A TRUSTEE WHO HAS SPECIAL SKILLS OR EXPERTISE, OR WHO IS NAMED TRUSTEE
7 IN RELIANCE ON THE TRUSTEE'S REPRESENTATION THAT THE TRUSTEE HAS SPECIAL
8 SKILLS OR EXPERTISE, SHALL USE THOSE SPECIAL SKILLS OR EXPERTISE.

9 14-10807. Delegation by trustee

10 A. A TRUSTEE MAY DELEGATE DUTIES AND POWERS THAT A PRUDENT TRUSTEE OF
11 COMPARABLE SKILLS COULD PROPERLY DELEGATE UNDER THE CIRCUMSTANCES. THE
12 TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL AND CAUTION IN:

13 1. SELECTING AN AGENT.

14 2. ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH
15 THE PURPOSES AND TERMS OF THE TRUST.

16 3. PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR THE
17 AGENT'S PERFORMANCE AND COMPLIANCE WITH THE TERMS OF THE DELEGATION.

18 B. IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY TO THE
19 TRUST TO EXERCISE REASONABLE CARE TO COMPLY WITH THE TERMS OF THE DELEGATION.

20 C. A TRUSTEE WHO COMPLIES WITH SUBSECTION A IS NOT LIABLE TO THE
21 BENEFICIARIES OR TO THE TRUST FOR AN ACTION OF THE AGENT TO WHOM THE FUNCTION
22 WAS DELEGATED.

23 D. BY ACCEPTING A DELEGATION OF POWERS OR DUTIES FROM THE TRUSTEE OF A
24 TRUST THAT IS SUBJECT TO THE LAW OF THIS STATE, AN AGENT SUBMITS TO THE
25 JURISDICTION OF THE COURTS OF THIS STATE.

26 14-10808. Powers to direct

27 A. WHILE A TRUST IS REVOCABLE, THE TRUSTEE MAY FOLLOW A DIRECTION OF
28 THE SETTLOR THAT IS CONTRARY TO THE TERMS OF THE TRUST.

29 B. IF THE TRUST PROVIDES THAT THE ASSETS IN THE TRUST ARE SUBJECT TO
30 THE DIRECTION OF THE SETTLOR OR A COTRUSTEE, BENEFICIARY OR THIRD PARTY, THE
31 TRUSTEE HAS NO DUTY TO REVIEW THE DIRECTIONS IT IS DIRECTED TO MAKE OR TO
32 NOTIFY THE BENEFICIARIES REGARDING ANY INVESTMENT ACTION TAKEN PURSUANT TO
33 THE DIRECTION. THE TRUSTEE IS NOT RESPONSIBLE FOR THE PURCHASE, MONITORING,
34 RETENTION OR SALE OF ASSETS THAT ARE SUBJECT TO THE DIRECTION OF THE SETTLOR
35 OR A COTRUSTEE, BENEFICIARY OR THIRD PARTY. THE TRUSTEE IS NOT SUBJECT TO
36 LIABILITY IF THE TRUSTEE ACTS PURSUANT TO THE DIRECTION, EVEN IF THE ACTIONS
37 CONSTITUTE A BREACH OF FIDUCIARY DUTY, UNLESS THE TRUSTEE ACTS IN BAD FAITH
38 OR WITH RECKLESS INDIFFERENCE.

39 C. THE TERMS OF A TRUST MAY CONFER ON A TRUSTEE OR OTHER PERSON A
40 POWER TO DIRECT THE MODIFICATION OR TERMINATION OF THE TRUST.

41 D. UNLESS THE TRUST INSTRUMENT PROVIDES OTHERWISE, A PERSON, OTHER
42 THAN A BENEFICIARY, WHO HOLDS A POWER TO DIRECT IS PRESUMPTIVELY A FIDUCIARY
43 WHO, AS SUCH, IS REQUIRED TO ACT IN GOOD FAITH WITH REGARD TO THE PURPOSES OF
44 THE TRUST AND THE INTERESTS OF THE BENEFICIARIES. THE HOLDER OF A POWER TO
45 DIRECT IS LIABLE FOR ANY LOSS THAT RESULTS FROM BREACH OF A FIDUCIARY DUTY.

1 14-10809. Control and protection of trust property

2 A TRUSTEE SHALL TAKE REASONABLE STEPS TO TAKE CONTROL OF AND PROTECT
3 THE TRUST PROPERTY.

4 14-10810. Record keeping and identification of trust property

5 A. A TRUSTEE SHALL KEEP ADEQUATE RECORDS OF THE ADMINISTRATION OF THE
6 TRUST.

7 B. A TRUSTEE SHALL KEEP TRUST PROPERTY SEPARATE FROM THE TRUSTEE'S OWN
8 PROPERTY.

9 C. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION D, A TRUSTEE SHALL CAUSE
10 THE TRUST PROPERTY TO BE DESIGNATED SO THAT THE INTEREST OF THE TRUST, TO THE
11 EXTENT FEASIBLE, APPEARS IN RECORDS MAINTAINED BY A PARTY OTHER THAN A
12 TRUSTEE OR BENEFICIARY.

13 D. IF THE TRUSTEE MAINTAINS RECORDS CLEARLY INDICATING THE RESPECTIVE
14 INTERESTS, A TRUSTEE MAY INVEST AS A WHOLE THE PROPERTY OF TWO OR MORE
15 SEPARATE TRUSTS.

16 14-10811. Enforcement and defense of claims

17 A TRUSTEE SHALL TAKE REASONABLE STEPS TO ENFORCE CLAIMS OF THE TRUST
18 AND TO DEFEND CLAIMS AGAINST THE TRUST.

19 14-10812. Collecting trust property

20 A TRUSTEE SHALL TAKE REASONABLE STEPS TO COMPEL A FORMER TRUSTEE OR
21 OTHER PERSON TO DELIVER TRUST PROPERTY TO THE TRUSTEE AND TO REDRESS A BREACH
22 OF TRUST KNOWN TO THE TRUSTEE TO HAVE BEEN COMMITTED BY A FORMER TRUSTEE.

23 14-10813. Duty to inform and report

24 A. UNLESS THE TRUST INSTRUMENT PROVIDES OTHERWISE, A TRUSTEE SHALL
25 KEEP THE QUALIFIED BENEFICIARIES OF THE TRUST REASONABLY INFORMED ABOUT THE
26 ADMINISTRATION OF THE TRUST AND OF THE MATERIAL FACTS NECESSARY FOR THEM TO
27 PROTECT THEIR INTERESTS. UNLESS THE TRUSTEE DETERMINES THAT IT IS
28 UNREASONABLE UNDER THE CIRCUMSTANCES TO DO SO, A TRUSTEE SHALL PROMPTLY
29 RESPOND TO A BENEFICIARY'S REQUEST FOR INFORMATION RELATED TO THE
30 ADMINISTRATION OF THE TRUST.

31 B. A TRUSTEE:

32 1. ON REQUEST OF A BENEFICIARY, SHALL PROMPTLY FURNISH TO THE
33 BENEFICIARY A COPY OF THE PORTIONS OF THE TRUST INSTRUMENT THAT ARE NECESSARY
34 TO DESCRIBE THE BENEFICIARY'S INTEREST.

35 2. WITHIN SIXTY DAYS AFTER ACCEPTING A TRUSTEESHIP, SHALL NOTIFY THE
36 QUALIFIED BENEFICIARIES OF THE ACCEPTANCE AND OF THE TRUSTEE'S NAME, ADDRESS
37 AND TELEPHONE NUMBER.

38 3. WITHIN SIXTY DAYS AFTER THE DATE THE TRUSTEE ACQUIRES KNOWLEDGE OF
39 THE CREATION OF AN IRREVOCABLE TRUST OR THE DATE THE TRUSTEE ACQUIRES
40 KNOWLEDGE THAT A FORMERLY REVOCABLE TRUST HAS BECOME IRREVOCABLE, WHETHER BY
41 THE DEATH OF THE SETTLOR OR OTHERWISE, SHALL NOTIFY THE QUALIFIED
42 BENEFICIARIES OF THE TRUST'S EXISTENCE, OF THE IDENTITY OF THE SETTLOR OR
43 SETTLORS, OF THE TRUSTEE'S NAME, ADDRESS AND TELEPHONE NUMBER, OF THE RIGHT
44 TO REQUEST A COPY OF THE RELEVANT PORTIONS OF THE TRUST INSTRUMENT AND OF THE
45 RIGHT TO A TRUSTEE'S REPORT AS PROVIDED IN SUBSECTION C.

1 4. SHALL NOTIFY THE QUALIFIED BENEFICIARIES AT LEAST THIRTY DAYS IN
2 ADVANCE OF ANY CHANGE IN THE METHOD OR RATE OF THE TRUSTEE'S COMPENSATION.

3 C. A TRUSTEE SHALL SEND TO THE DISTRIBUTEES OR PERMISSIBLE
4 DISTRIBUTEES OF TRUST INCOME OR PRINCIPAL AND TO OTHER BENEFICIARIES WHO
5 REQUEST IT, AT LEAST ANNUALLY AND AT THE TERMINATION OF THE TRUST, A REPORT
6 OF THE TRUST PROPERTY, LIABILITIES, RECEIPTS AND DISBURSEMENTS, INCLUDING THE
7 SOURCE AND AMOUNT OF THE TRUSTEE'S COMPENSATION, A LISTING OF THE TRUST
8 ASSETS AND, IF FEASIBLE, THEIR RESPECTIVE MARKET VALUES. ON A VACANCY IN A
9 TRUSTEESHIP, UNLESS A COTRUSTEE REMAINS IN OFFICE, A REPORT MUST BE SENT TO
10 THE QUALIFIED BENEFICIARIES BY THE FORMER TRUSTEE. A PERSONAL
11 REPRESENTATIVE, CONSERVATOR OR GUARDIAN MAY SEND THE QUALIFIED BENEFICIARIES
12 A REPORT ON BEHALF OF A DECEASED OR INCAPACITATED TRUSTEE.

13 D. A BENEFICIARY MAY WAIVE THE RIGHT TO A TRUSTEE'S REPORT OR OTHER
14 INFORMATION OTHERWISE REQUIRED TO BE FURNISHED UNDER THIS SECTION. A
15 BENEFICIARY, WITH RESPECT TO FUTURE REPORTS AND OTHER INFORMATION, MAY
16 WITHDRAW A WAIVER PREVIOUSLY GIVEN.

17 E. SUBSECTION B, PARAGRAPHS 2 AND 3 APPLY ONLY TO A TRUSTEE WHO
18 ACCEPTS A TRUSTEESHIP ON OR AFTER JANUARY 1, 2009, TO AN IRREVOCABLE TRUST
19 CREATED ON OR AFTER JANUARY 1, 2009 AND TO A REVOCABLE TRUST THAT BECOMES
20 IRREVOCABLE ON OR AFTER JANUARY 1, 2009.

21 14-10814. Discretionary powers; tax savings

22 A. NOTWITHSTANDING THE BREADTH OF DISCRETION GRANTED TO A TRUSTEE IN
23 THE TERMS OF THE TRUST, INCLUDING THE USE OF TERMS SUCH AS ABSOLUTE, SOLE OR
24 UNCONTROLLED, THE TRUSTEE SHALL EXERCISE A DISCRETIONARY POWER IN GOOD FAITH
25 AS TO ONLY BENEFICIARIES OF THE TRUST AND CREDITORS OF THE TRUST AND NO OTHER
26 PERSONS, INCLUDING CREDITORS OF THE BENEFICIARIES, EXCEPT ONLY TO THE EXTENT
27 THAT CREDITORS OF BENEFICIARIES ARE EXPRESSLY ENTITLED TO ATTACHMENT PURSUANT
28 TO SECTION 14-10504, SUBSECTION B AND IN ACCORDANCE WITH THE TERMS AND
29 PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES.

30 B. SUBJECT TO SUBSECTION D OF THIS SECTION, AND UNLESS THE TERMS OF
31 THE TRUST EXPRESSLY INDICATE THAT A RULE IN THIS SUBSECTION DOES NOT APPLY:

32 1. A PERSON OTHER THAN A SETTLOR WHO IS A BENEFICIARY AND TRUSTEE OF A
33 TRUST THAT CONFERS ON THE TRUSTEE A POWER TO MAKE DISCRETIONARY DISTRIBUTIONS
34 TO OR FOR THE TRUSTEE'S PERSONAL BENEFIT MAY EXERCISE THE POWER ONLY IN
35 ACCORDANCE WITH AN ASCERTAINABLE STANDARD RELATING TO THE TRUSTEE'S
36 INDIVIDUAL HEALTH, EDUCATION, SUPPORT OR MAINTENANCE WITHIN THE MEANING OF
37 SECTION 2041(b)(1)(A) OR 2514(c)(1) OF THE INTERNAL REVENUE CODE. THIS
38 PARAGRAPH DOES NOT EXPAND THE POWER OR DUTY OF A TRUSTEE TO MAKE
39 DISTRIBUTIONS AND DOES NOT APPLY TO A POWER HELD IN AN INDIVIDUAL CAPACITY.

40 2. A TRUSTEE MAY NOT EXERCISE A POWER TO MAKE DISCRETIONARY
41 DISTRIBUTIONS TO SATISFY A LEGAL OBLIGATION OF SUPPORT THAT THE TRUSTEE
42 PERSONALLY OWES ANOTHER PERSON.

43 C. A POWER WHOSE EXERCISE IS LIMITED OR PROHIBITED BY SUBSECTION B OF
44 THIS SECTION MAY BE EXERCISED BY A MAJORITY OF THE REMAINING TRUSTEES WHOSE
45 EXERCISE OF THE POWER IS NOT SO LIMITED OR PROHIBITED. IF THE POWER OF ALL

1 TRUSTEES IS SO LIMITED OR PROHIBITED, THE COURT MAY APPOINT A SPECIAL
2 FIDUCIARY WITH AUTHORITY TO EXERCISE THE POWER.

3 D. SUBSECTION B OF THIS SECTION DOES NOT APPLY TO:

4 1. A POWER HELD BY THE SETTLOR'S SPOUSE WHO IS THE TRUSTEE OF A TRUST
5 FOR WHICH A MARITAL DEDUCTION, AS DEFINED IN SECTION 2056(b)(5) OR 2523(e) OF
6 THE INTERNAL REVENUE CODE, WAS PREVIOUSLY ALLOWED.

7 2. ANY TRUST DURING ANY PERIOD THAT THE TRUST MAY BE REVOKED OR
8 AMENDED BY ITS SETTLOR.

9 3. A TRUST IF CONTRIBUTIONS TO THE TRUST QUALIFY FOR THE ANNUAL
10 EXCLUSION UNDER SECTION 2503(c) OF THE INTERNAL REVENUE CODE.

11 14-10815. General powers of trustee

12 A. A TRUSTEE, WITHOUT AUTHORIZATION BY THE COURT, MAY EXERCISE:

13 1. POWERS CONFERRED BY THE TERMS OF THE TRUST.

14 2. EXCEPT AS LIMITED BY THE TERMS OF THE TRUST:

15 (a) ALL POWERS OVER THE TRUST PROPERTY THAT AN UNMARRIED COMPETENT
16 OWNER HAS OVER INDIVIDUALLY OWNED PROPERTY.

17 (b) ANY OTHER POWERS APPROPRIATE TO ACHIEVE THE PROPER INVESTMENT,
18 MANAGEMENT AND DISTRIBUTION OF THE TRUST PROPERTY.

19 (c) ANY OTHER POWERS CONFERRED BY THIS CHAPTER.

20 B. THE EXERCISE OF A POWER BY A PERSON ACTING IN A FIDUCIARY CAPACITY
21 IS SUBJECT TO THE FIDUCIARY DUTIES PRESCRIBED BY THIS ARTICLE.

22 14-10816. Specific powers of trustee

23 WITHOUT LIMITING THE AUTHORITY CONFERRED BY SECTION 14-10815, A TRUSTEE
24 MAY:

25 1. COLLECT TRUST PROPERTY AND ACCEPT OR REJECT ADDITIONS TO THE TRUST
26 PROPERTY FROM A SETTLOR OR ANY OTHER PERSON.

27 2. ACQUIRE OR SELL PROPERTY, FOR CASH OR ON CREDIT, AT PUBLIC OR
28 PRIVATE SALE.

29 3. EXCHANGE, PARTITION OR OTHERWISE CHANGE THE CHARACTER OF TRUST
30 PROPERTY.

31 4. DEPOSIT TRUST MONEY IN AN ACCOUNT IN A REGULATED FINANCIAL SERVICE
32 INSTITUTION.

33 5. BORROW MONEY, WITH OR WITHOUT SECURITY, AND MORTGAGE OR PLEDGE
34 TRUST PROPERTY FOR A PERIOD WITHIN OR EXTENDING BEYOND THE DURATION OF THE
35 TRUST.

36 6. WITH RESPECT TO AN INTEREST IN A PROPRIETORSHIP, PARTNERSHIP,
37 LIMITED LIABILITY COMPANY, BUSINESS TRUST, CORPORATION OR OTHER FORM OF
38 BUSINESS OR ENTERPRISE, CONTINUE THE BUSINESS OR OTHER ENTERPRISE AND TAKE
39 ANY ACTION THAT MAY BE TAKEN BY SHAREHOLDERS, MEMBERS OR PROPERTY OWNERS,
40 INCLUDING MERGING, DISSOLVING OR OTHERWISE CHANGING THE FORM OF BUSINESS
41 ORGANIZATION OR CONTRIBUTING ADDITIONAL CAPITAL.

42 7. WITH RESPECT TO STOCKS OR OTHER SECURITIES, EXERCISE THE RIGHTS OF
43 AN ABSOLUTE OWNER, INCLUDING THE RIGHT TO:

44 (a) VOTE, GIVE PROXIES TO VOTE, WITH OR WITHOUT POWER OF SUBSTITUTION,
45 OR ENTER INTO OR CONTINUE A VOTING TRUST AGREEMENT.

1 (b) HOLD A SECURITY IN THE NAME OF A NOMINEE OR IN OTHER FORM WITHOUT
2 DISCLOSURE OF THE TRUST SO THAT TITLE MAY PASS BY DELIVERY.

3 (c) PAY CALLS, ASSESSMENTS AND OTHER SUMS CHARGEABLE OR ACCRUING
4 AGAINST THE SECURITIES AND SELL OR EXERCISE STOCK SUBSCRIPTION OR CONVERSION
5 RIGHTS.

6 (d) DEPOSIT THE SECURITIES WITH A DEPOSITARY OR OTHER REGULATED
7 FINANCIAL SERVICE INSTITUTION.

8 8. WITH RESPECT TO AN INTEREST IN REAL PROPERTY, CONSTRUCT OR MAKE
9 ORDINARY OR EXTRAORDINARY REPAIRS TO, ALTERATIONS TO OR IMPROVEMENTS IN
10 BUILDINGS OR OTHER STRUCTURES, DEMOLISH IMPROVEMENTS, RAZE EXISTING OR ERECT
11 NEW PARTY WALLS OR BUILDINGS, SUBDIVIDE OR DEVELOP LAND, DEDICATE LAND TO
12 PUBLIC USE OR GRANT PUBLIC OR PRIVATE EASEMENTS AND MAKE OR VACATE PLATS AND
13 ADJUST BOUNDARIES.

14 9. ENTER INTO A LEASE FOR ANY PURPOSE AS LESSOR OR LESSEE, INCLUDING A
15 LEASE OR OTHER ARRANGEMENT FOR EXPLORATION AND REMOVAL OF NATURAL RESOURCES,
16 WITH OR WITHOUT THE OPTION TO PURCHASE OR RENEW, FOR A PERIOD WITHIN OR
17 EXTENDING BEYOND THE DURATION OF THE TRUST.

18 10. GRANT AN OPTION INVOLVING A SALE, LEASE OR OTHER DISPOSITION OF
19 TRUST PROPERTY OR ACQUIRE AN OPTION FOR THE ACQUISITION OF PROPERTY,
20 INCLUDING AN OPTION EXERCISABLE BEYOND THE DURATION OF THE TRUST, AND
21 EXERCISE AN OPTION SO ACQUIRED.

22 11. INSURE THE PROPERTY OF THE TRUST AGAINST DAMAGE OR LOSS AND INSURE
23 THE TRUSTEE, THE TRUSTEE'S AGENTS AND BENEFICIARIES AGAINST LIABILITY ARISING
24 FROM THE ADMINISTRATION OF THE TRUST.

25 12. ABANDON OR DECLINE TO ADMINISTER PROPERTY OF NO VALUE OR OF
26 INSUFFICIENT VALUE TO JUSTIFY ITS COLLECTION OR CONTINUED ADMINISTRATION.

27 13. WITH RESPECT TO POSSIBLE LIABILITY FOR VIOLATION OF ENVIRONMENTAL
28 LAW:

29 (a) INSPECT OR INVESTIGATE PROPERTY THE TRUSTEE HOLDS OR HAS BEEN
30 ASKED TO HOLD, OR PROPERTY OWNED OR OPERATED BY AN ORGANIZATION IN WHICH THE
31 TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD AN INTEREST, FOR THE PURPOSE OF
32 DETERMINING THE APPLICATION OF ENVIRONMENTAL LAW WITH RESPECT TO THE
33 PROPERTY.

34 (b) TAKE ACTION TO PREVENT, ABATE OR OTHERWISE REMEDY ANY ACTUAL OR
35 POTENTIAL VIOLATION OF ANY ENVIRONMENTAL LAW AFFECTING PROPERTY HELD DIRECTLY
36 OR INDIRECTLY BY THE TRUSTEE, WHETHER TAKEN BEFORE OR AFTER THE ASSERTION OF
37 A CLAIM OR THE INITIATION OF GOVERNMENTAL ENFORCEMENT.

38 (c) DECLINE TO ACCEPT PROPERTY INTO TRUST OR DISCLAIM ANY POWER WITH
39 RESPECT TO PROPERTY THAT IS OR MAY BE BURDENED WITH LIABILITY FOR VIOLATION
40 OF ENVIRONMENTAL LAW.

41 (d) COMPROMISE CLAIMS AGAINST THE TRUST THAT MAY BE ASSERTED FOR AN
42 ALLEGED VIOLATION OF ENVIRONMENTAL LAW.

43 (e) PAY THE EXPENSE OF ANY INSPECTION, REVIEW, ABATEMENT OR REMEDIAL
44 ACTION TO COMPLY WITH ENVIRONMENTAL LAW.

1 14. PAY OR CONTEST ANY CLAIM, SETTLE A CLAIM BY OR AGAINST THE TRUST
2 AND RELEASE IN WHOLE OR IN PART A CLAIM BELONGING TO THE TRUST.

3 15. PAY TAXES, ASSESSMENTS, COMPENSATION OF THE TRUSTEE AND OF
4 EMPLOYEES AND AGENTS OF THE TRUST AND OTHER EXPENSES INCURRED IN THE
5 ADMINISTRATION OF THE TRUST.

6 16. EXERCISE ELECTIONS WITH RESPECT TO FEDERAL, STATE AND LOCAL TAXES.

7 17. SELECT A MODE OF PAYMENT UNDER ANY EMPLOYEE BENEFIT OR RETIREMENT
8 PLAN, ANNUITY OR LIFE INSURANCE PAYABLE TO THE TRUSTEE, EXERCISE RIGHTS
9 THEREUNDER, INCLUDING EXERCISE OF THE RIGHT TO INDEMNIFICATION FOR EXPENSES
10 AND AGAINST LIABILITIES, AND TAKE APPROPRIATE ACTION TO COLLECT THE PROCEEDS.

11 18. MAKE LOANS OUT OF TRUST PROPERTY, INCLUDING LOANS TO A BENEFICIARY
12 ON TERMS AND CONDITIONS THE TRUSTEE CONSIDERS TO BE FAIR AND REASONABLE UNDER
13 THE CIRCUMSTANCES, AND THE TRUSTEE HAS A LIEN ON FUTURE DISTRIBUTIONS FOR
14 REPAYMENT OF THOSE LOANS.

15 19. PLEDGE TRUST PROPERTY TO GUARANTEE LOANS MADE BY OTHERS TO THE
16 BENEFICIARY.

17 20. APPOINT A TRUSTEE TO ACT IN ANOTHER JURISDICTION WITH RESPECT TO
18 TRUST PROPERTY LOCATED IN THE OTHER JURISDICTION, CONFER ON THE APPOINTED
19 TRUSTEE ALL OF THE POWERS AND DUTIES OF THE APPOINTING TRUSTEE, REQUIRE THAT
20 THE APPOINTED TRUSTEE FURNISH SECURITY AND REMOVE ANY TRUSTEE SO APPOINTED.

21 21. PAY AN AMOUNT DISTRIBUTABLE TO A BENEFICIARY WHO IS UNDER A LEGAL
22 DISABILITY OR WHO THE TRUSTEE REASONABLY BELIEVES IS INCAPACITATED, BY PAYING
23 IT DIRECTLY TO THE BENEFICIARY OR APPLYING IT FOR THE BENEFICIARY'S BENEFIT,
24 OR BY EITHER:

25 (a) PAYING IT TO THE BENEFICIARY'S CONSERVATOR OR, IF THE BENEFICIARY
26 DOES NOT HAVE A CONSERVATOR, THE BENEFICIARY'S GUARDIAN.

27 (b) PAYING IT TO THE BENEFICIARY'S CUSTODIAN UNDER THE UNIFORM
28 TRANSFERS TO MINORS ACT OR CUSTODIAL TRUSTEE UNDER THE UNIFORM CUSTODIAL
29 TRUST ACT, AND, FOR THAT PURPOSE, CREATING A CUSTODIANSHIP OR CUSTODIAL
30 TRUST.

31 (c) IF THE TRUSTEE DOES NOT KNOW OF A CONSERVATOR, GUARDIAN, CUSTODIAN
32 OR CUSTODIAL TRUSTEE, PAYING IT TO AN ADULT RELATIVE OR OTHER PERSON HAVING
33 LEGAL OR PHYSICAL CARE OR CUSTODY OF THE BENEFICIARY TO BE EXPENDED ON THE
34 BENEFICIARY'S BEHALF.

35 (d) MANAGING IT AS A SEPARATE FUND ON THE BENEFICIARY'S BEHALF,
36 SUBJECT TO THE BENEFICIARY'S CONTINUING RIGHT TO WITHDRAW THE DISTRIBUTION.

37 22. ON DISTRIBUTION OF TRUST PROPERTY OR THE DIVISION OR TERMINATION OF
38 A TRUST, MAKE DISTRIBUTIONS IN DIVIDED OR UNDIVIDED INTERESTS, ALLOCATE
39 PARTICULAR ASSETS, INCLUDING COMMUNITY PROPERTY, IN PROPORTIONATE OR
40 DISPROPORTIONATE SHARES, VALUE THE TRUST PROPERTY FOR THOSE PURPOSES AND
41 ADJUST FOR RESULTING DIFFERENCES IN VALUATION. IN MAKING A DIVISION OR
42 DISTRIBUTION OF COMMUNITY PROPERTY HELD IN TRUST, THE TRUSTEE MAY CONSIDER
43 COMMUNITY PROPERTY HELD OUTSIDE THE TRUST SO THAT THE DIVISION OF COMMUNITY
44 PROPERTY HELD IN THE TRUST AND OUTSIDE OF THE TRUST IS MADE BASED ON EQUAL
45 VALUE BUT NOT NECESSARILY PROPORTIONATELY.

23. RESOLVE A DISPUTE CONCERNING THE INTERPRETATION OF THE TRUST OR ITS ADMINISTRATION BY MEDIATION, ARBITRATION OR OTHER PROCEDURE FOR ALTERNATIVE DISPUTE RESOLUTION.

24. PROSECUTE OR DEFEND AN ACTION, CLAIM OR JUDICIAL PROCEEDING IN ANY JURISDICTION TO PROTECT TRUST PROPERTY AND THE TRUSTEE IN THE PERFORMANCE OF THE TRUSTEE'S DUTIES.

25. SIGN AND DELIVER CONTRACTS AND OTHER INSTRUMENTS THAT ARE USEFUL TO ACHIEVE OR FACILITATE THE EXERCISE OF THE TRUSTEE'S POWERS.

26. ON TERMINATION OF THE TRUST, EXERCISE THE POWERS APPROPRIATE TO WIND UP THE ADMINISTRATION OF THE TRUST AND DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT.

14-10817. Distribution on termination

A. ON TERMINATION OR PARTIAL TERMINATION OF A TRUST, THE TRUSTEE MAY SEND TO THE BENEFICIARIES A PROPOSAL FOR DISTRIBUTION. THE RIGHT OF ANY BENEFICIARY TO OBJECT TO THE PROPOSED DISTRIBUTION TERMINATES IF THE BENEFICIARY DOES NOT NOTIFY THE TRUSTEE OF AN OBJECTION WITHIN THIRTY DAYS AFTER THE PROPOSAL WAS SENT BUT ONLY IF THE PROPOSAL INFORMED THE BENEFICIARY OF THE RIGHT TO OBJECT AND OF THE TIME ALLOWED FOR OBJECTION.

B. ON THE OCCURRENCE OF AN EVENT TERMINATING OR PARTIALLY TERMINATING A TRUST, THE TRUSTEE, WITHIN A REASONABLE TIME, SHALL DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT SUBJECT TO THE RIGHT OF THE TRUSTEE TO RETAIN A REASONABLE RESERVE FOR THE PAYMENT OF DEBTS, EXPENSES AND TAXES.

C. A RELEASE BY A BENEFICIARY OF A TRUSTEE FROM LIABILITY FOR BREACH OF TRUST IS INVALID TO THE EXTENT:

1. IT WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE.

2. THE BENEFICIARY, AT THE TIME OF THE RELEASE, DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.

14-10818. Trust protector

A. A TRUST INSTRUMENT MAY PROVIDE FOR THE APPOINTMENT OF A TRUST PROTECTOR. FOR THE PURPOSES OF THIS SECTION, A PERSON DESIGNATED WITH A STATUS OR TITLE, OTHER THAN THAT OF A BENEFICIARY, WITH POWERS SIMILAR TO THOSE SPECIFIED IN SUBSECTION B IS A TRUST PROTECTOR, EXCEPT TO THE EXTENT OTHERWISE PROVIDED IN THE TRUST INSTRUMENT.

B. A TRUST PROTECTOR APPOINTED BY THE TRUST INSTRUMENT HAS THE POWERS, DELEGATIONS AND FUNCTIONS CONFERRED ON THE TRUST PROTECTOR BY THE TRUST INSTRUMENT, INCLUDING THE FOLLOWING:

1. REMOVE AND APPOINT A TRUSTEE.

2. MODIFY OR AMEND THE TRUST INSTRUMENT FOR ANY VALID PURPOSE OR REASON, INCLUDING, WITHOUT LIMITATION, TO ACHIEVE FAVORABLE TAX STATUS OR TO RESPOND TO CHANGES IN THE INTERNAL REVENUE CODE OR STATE LAW, OR THE RULINGS AND REGULATIONS UNDER THAT CODE OR LAW.

3. INCREASE, DECREASE, MODIFY OR RESTRICT THE INTERESTS OF ANY BENEFICIARY OF THE TRUST.

4. MODIFY THE TERMS OF A POWER OF APPOINTMENT GRANTED BY THE TRUST.

5. CHANGE THE APPLICABLE LAW GOVERNING THE TRUST.

C. EXCEPT TO THE EXTENT OTHERWISE SPECIFICALLY PROVIDED IN THE TRUST INSTRUMENT, A MODIFICATION AUTHORIZED UNDER SUBSECTION B MAY NOT:

1. GRANT A BENEFICIAL INTEREST TO AN INDIVIDUAL OR A CLASS OF INDIVIDUALS UNLESS THE INDIVIDUAL OR CLASS OF INDIVIDUALS IS SPECIFICALLY PROVIDED FOR UNDER THE TRUST INSTRUMENT.

2. MODIFY THE BENEFICIAL INTEREST OF A GOVERNMENTAL UNIT IN A MEDICAID QUALIFYING TRUST.

D. ANY PROVISION OF THIS TITLE TO THE CONTRARY, BUT EXCEPT TO THE EXTENT OTHERWISE PROVIDED BY THE TRUST INSTRUMENT, A TRUST PROTECTOR IS NOT A TRUSTEE OR FIDUCIARY AND IS NOT LIABLE OR ACCOUNTABLE AS A TRUSTEE OR FIDUCIARY BECAUSE OF AN ACT OR OMISSION OF THE TRUST PROTECTOR WHEN PERFORMING OR FAILING TO PERFORM THE DUTIES OF A TRUST PROTECTOR UNDER THE TRUST INSTRUMENT. THIS SUBSECTION DOES NOT APPLY TO TRUSTS THAT BECOME IRREVOCABLE BEFORE THE EFFECTIVE DATE OF THIS SECTION.

ARTICLE 9. PRUDENT INVESTOR RULE

14-10901. Prudent investor rule

A. EXCEPT AS PROVIDED IN SUBSECTION B, A TRUSTEE WHO INVESTS AND MANAGES TRUST ASSETS OWES A DUTY TO THE BENEFICIARIES OF THE TRUST TO COMPLY WITH THE PRUDENT INVESTOR RULE REQUIREMENTS OF THIS ARTICLE.

B. THE PRUDENT INVESTOR RULE IS A DEFAULT RULE AND MAY BE EXPANDED, RESTRICTED, ELIMINATED OR OTHERWISE ALTERED BY THE PROVISIONS OF A TRUST.

C. A TRUSTEE IS NOT LIABLE TO A BENEFICIARY TO THE EXTENT THAT THE TRUSTEE ACTED IN REASONABLE RELIANCE ON THE PROVISIONS OF THE TRUST.

14-10902. Standard of care; portfolio strategy; risk and return objectives

A. A TRUSTEE SHALL INVEST AND MANAGE TRUST ASSETS AS A PRUDENT INVESTOR WOULD BY CONSIDERING THE PURPOSES, TERMS, DISTRIBUTION REQUIREMENTS AND OTHER CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL AND CAUTION.

B. A TRUSTEE'S INVESTMENT AND MANAGEMENT DECISIONS RESPECTING INDIVIDUAL ASSETS SHALL NOT BE EVALUATED IN ISOLATION BUT IN THE CONTEXT OF THE TRUST PORTFOLIO AS A WHOLE AND AS A PART OF AN OVERALL INVESTMENT STRATEGY HAVING RISK AND RETURN OBJECTIVES REASONABLY SUITED TO THE TRUST.

C. AMONG CIRCUMSTANCES THAT A TRUSTEE SHALL CONSIDER IN INVESTING AND MANAGING TRUST ASSETS ARE ANY OF THE FOLLOWING THAT ARE RELEVANT TO THE TRUST OR ITS BENEFICIARIES:

1. GENERAL ECONOMIC CONDITIONS.

2. THE POSSIBLE EFFECT OF INFLATION OR DEFLATION.

3. THE EXPECTED TAX CONSEQUENCES OF INVESTMENT DECISIONS OR STRATEGIES.

4. THE ROLE THAT EACH INVESTMENT OR COURSE OF ACTION PLAYS WITHIN THE OVERALL TRUST PORTFOLIO, WHICH MAY INCLUDE FINANCIAL ASSETS, INTERESTS IN CLOSELY HELD ENTERPRISES, SPECIALTY ASSETS, ALTERNATIVE INVESTMENTS, TANGIBLE AND INTANGIBLE PERSONAL PROPERTY AND REAL PROPERTY.

1 5. THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF
2 CAPITAL.

3 6. OTHER RESOURCES OF THE BENEFICIARIES.

4 7. NEEDS FOR LIQUIDITY, REGULARITY OF INCOME AND PRESERVATION OR
5 APPRECIATION OF CAPITAL.

6 8. AN ASSET'S SPECIAL RELATIONSHIP OR SPECIAL VALUE, IF ANY, TO THE
7 PURPOSES OF THE TRUST OR TO ONE OR MORE OF THE BENEFICIARIES.

8 D. A TRUSTEE SHALL MAKE A REASONABLE EFFORT TO VERIFY FACTS RELEVANT
9 TO THE INVESTMENT AND MANAGEMENT OF TRUST ASSETS.

10 E. A TRUSTEE MAY INVEST IN ANY KIND OF PROPERTY OR TYPE OF INVESTMENT
11 CONSISTENT WITH THE STANDARDS OF THIS ARTICLE.

12 14-10903. Diversification

13 A TRUSTEE SHALL DIVERSIFY THE INVESTMENTS OF THE TRUST UNLESS THE
14 TRUSTEE REASONABLY DETERMINES THAT, BECAUSE OF SPECIAL CIRCUMSTANCES, THE
15 PURPOSES OF THE TRUST ARE BETTER SERVED WITHOUT DIVERSIFYING.

16 14-10904. Duties at inception of trusteeship

17 WITHIN A REASONABLE TIME AFTER ACCEPTING A TRUSTEESHIP OR RECEIVING
18 TRUST ASSETS, A TRUSTEE SHALL REVIEW THE TRUST ASSETS AND MAKE AND IMPLEMENT
19 DECISIONS CONCERNING THE RETENTION AND DISPOSITION OF ASSETS IN ORDER TO
20 BRING THE TRUST PORTFOLIO INTO COMPLIANCE WITH THE PURPOSES, TERMS,
21 DISTRIBUTION REQUIREMENTS AND OTHER CIRCUMSTANCES OF THE TRUST AND WITH THE
22 REQUIREMENTS OF THIS ARTICLE.

23 14-10905. Reviewing compliance

24 COMPLIANCE WITH THIS ARTICLE IS DETERMINED IN LIGHT OF THE FACTS AND
25 CIRCUMSTANCES EXISTING AT THE TIME OF A TRUSTEE'S DECISION OR ACTION AND NOT
26 BY HINDSIGHT.

27 14-10906. Prudent investor rule: language to invoke standard

28 THE FOLLOWING TERMS OR COMPARABLE LANGUAGE IN THE PROVISIONS OF A
29 TRUST, UNLESS OTHERWISE LIMITED OR MODIFIED, AUTHORIZES ANY INVESTMENT OR
30 STRATEGY PERMITTED UNDER THIS ARTICLE:

31 1. INVESTMENTS PERMISSIBLE BY LAW FOR INVESTMENT OF TRUST FUNDS.

32 2. LEGAL INVESTMENTS.

33 3. AUTHORIZED INVESTMENTS.

34 4. USING THE JUDGMENT AND CARE UNDER THE CIRCUMSTANCES THEN PREVAILING
35 THAT PERSONS OF PRUDENCE, DISCRETION AND INTELLIGENCE EXERCISE IN THE
36 MANAGEMENT OF THEIR OWN AFFAIRS, NOT IN REGARD TO SPECULATION BUT IN REGARD
37 TO THE PERMANENT DISPOSITION OF THEIR FUNDS, CONSIDERING THE PROBABLE INCOME
38 AS WELL AS THE PROBABLE SAFETY OF THEIR CAPITAL.

39 5. PRUDENT MAN RULE.

40 6. PRUDENT TRUSTEE RULE.

41 7. PRUDENT PERSON RULE.

42 8. PRUDENT INVESTOR RULE.

14-10907. Delegation of investment and management functions:
duties; limitations

A. A FIDUCIARY MAY DELEGATE INVESTMENT AND MANAGEMENT FUNCTIONS THAT A PRUDENT INVESTOR OF COMPARABLE SKILLS MIGHT DELEGATE UNDER THE CIRCUMSTANCES.

B. A FIDUCIARY IS NOT RESPONSIBLE FOR THE INVESTMENT DECISIONS OR ACTIONS OF THE INVESTMENT AGENT TO WHICH THE INVESTMENT FUNCTIONS ARE DELEGATED IF THE FIDUCIARY EXERCISES REASONABLE CARE, SKILL AND CAUTION IN SELECTING THE INVESTMENT AGENT, IN ESTABLISHING THE SCOPE AND SPECIFIC TERMS OF THE DELEGATION AND IN REVIEWING PERIODICALLY THE INVESTMENT AGENT'S ACTIONS IN ORDER TO MONITOR THE INVESTMENT AGENT'S PERFORMANCE AND COMPLIANCE WITH THE SCOPE AND SPECIFIC TERMS OF THE DELEGATION.

C. THE INVESTMENT AGENT MUST COMPLY WITH THE SCOPE AND TERMS OF THE DELEGATION AND EXERCISE THE DELEGATED FUNCTION WITH REASONABLE CARE, SKILL AND CAUTION AND IS LIABLE TO THE TRUST IF THE AGENT FAILS TO DO SO. AN INVESTMENT AGENT WHO REPRESENTS THAT THE AGENT HAS SPECIAL INVESTMENT SKILLS MUST EXERCISE THOSE SKILLS.

D. AN INVESTMENT AGENT WHO ACCEPTS THE DELEGATION OF A FIDUCIARY'S FUNCTION FROM A FIDUCIARY WHO IS SUBJECT TO THE JURISDICTION OF A COURT OF THIS STATE IS DEEMED TO HAVE SUBMITTED TO THE JURISDICTION OF THAT COURT EVEN IF THE DELEGATION AGREEMENT PROVIDES FOR A DIFFERENT JURISDICTION OR VENUE.

E. A COFIDUCIARY MAY DELEGATE INVESTMENT AND MANAGEMENT FUNCTIONS TO ANOTHER COFIDUCIARY IF THE DELEGATING COFIDUCIARY REASONABLY BELIEVES THAT THE OTHER COFIDUCIARY HAS GREATER INVESTMENT SKILLS THAN THE DELEGATING COFIDUCIARY WITH RESPECT TO THOSE FUNCTIONS. THE DELEGATING COFIDUCIARY IS NOT RESPONSIBLE FOR THE INVESTMENT DECISIONS OR ACTIONS OF THE OTHER COFIDUCIARY TO WHICH THE INVESTMENT FUNCTION ARE DELEGATED IF THE DELEGATING COFIDUCIARY EXERCISES REASONABLE CARE, SKILL AND CAUTION IN ESTABLISHING THE SCOPE AND SPECIFIC TERMS OF THE DELEGATION AND IN REVIEWING PERIODICALLY THE OTHER COFIDUCIARY'S ACTIONS IN ORDER TO MONITOR THE COFIDUCIARY'S PERFORMANCE AND COMPLIANCE WITH THE SCOPE AND SPECIFIC TERMS OF THE DELEGATION.

F. INVESTMENT IN A MUTUAL FUND IS NOT A DELEGATION OF INVESTMENT FUNCTION AND NEITHER THE MUTUAL FUND NOR ITS ADVISOR IS AN INVESTMENT AGENT.

14-10908. Life insurance on settlor; liability of trustee

A TRUSTEE MAY ACQUIRE OR RETAIN A CONTRACT OF LIFE INSURANCE ON THE LIFE OF THE SETTLOR OR THE SETTLOR'S SPOUSE, OR BOTH, WITHOUT LIABILITY FOR A LOSS ARISING FROM THE TRUSTEE'S FAILURE TO:

1. DETERMINE WHETHER THE CONTRACT IS OR REMAINS A PROPER INVESTMENT.
2. INVESTIGATE THE FINANCIAL STRENGTH OF THE LIFE INSURANCE COMPANY.
3. EXERCISE NONFORFEITURE PROVISIONS AVAILABLE UNDER THE CONTRACT.
4. DIVERSIFY THE CONTRACT.

14-10909. Application to existing trusts

A. THIS ARTICLE APPLIES TO TRUSTS EXISTING ON AND CREATED AFTER JULY 20, 1996.

B. AS APPLIED TO TRUSTS EXISTING ON JULY 20, 1996, THIS ARTICLE GOVERNS ONLY DECISIONS OR ACTIONS OCCURRING AFTER THAT DATE.

ARTICLE 10. LIABILITY OF TRUSTEES AND
RIGHTS OF PERSONS DEALING WITH TRUSTEES

14-11001. Remedies for breach of trust

A. A VIOLATION BY A TRUSTEE OF A DUTY THE TRUSTEE OWES TO A BENEFICIARY IS A BREACH OF TRUST.

B. EXCEPT AS PROVIDED IN SECTION 14-7404, TO REMEDY A BREACH OF TRUST THAT HAS OCCURRED OR MAY OCCUR, THE COURT MAY:

1. COMPEL THE TRUSTEE TO PERFORM THE TRUSTEE'S DUTIES.
2. ENJOIN THE TRUSTEE FROM COMMITTING A BREACH OF TRUST.
3. COMPEL THE TRUSTEE TO REDRESS A BREACH OF TRUST BY PAYING MONEY, RESTORING PROPERTY OR OTHER MEANS.
4. ORDER A TRUSTEE TO ACCOUNT.
5. APPOINT A SPECIAL FIDUCIARY TO TAKE POSSESSION OF THE TRUST PROPERTY AND ADMINISTER THE TRUST.
6. SUSPEND THE TRUSTEE.
7. REMOVE THE TRUSTEE AS PROVIDED IN SECTION 14-10706.
8. REDUCE OR DENY COMPENSATION TO THE TRUSTEE.
9. SUBJECT TO SECTION 14-10706, VOID AN ACT OF THE TRUSTEE, IMPOSE A LIEN OR A CONSTRUCTIVE TRUST ON TRUST PROPERTY OR TRACE TRUST PROPERTY WRONGFULLY DISPOSED OF AND RECOVER THE PROPERTY OR ITS PROCEEDS.
10. ORDER ANY OTHER APPROPRIATE RELIEF.

14-11002. Damages for breach of trust

A. EXCEPT AS PROVIDED IN SECTION 14-7404, A TRUSTEE WHO COMMITS A BREACH OF TRUST IS LIABLE TO THE BENEFICIARIES AFFECTED FOR THE GREATER OF EITHER:

1. THE AMOUNT REQUIRED TO RESTORE THE VALUE OF THE TRUST PROPERTY AND TRUST DISTRIBUTIONS TO WHAT THEY WOULD HAVE BEEN HAD THE BREACH NOT OCCURRED.
2. THE PROFIT THE TRUSTEE MADE BY REASON OF THE BREACH.

B. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF MORE THAN ONE TRUSTEE IS LIABLE TO THE BENEFICIARIES FOR A BREACH OF TRUST, A TRUSTEE IS ENTITLED TO CONTRIBUTION FROM THE OTHER TRUSTEE OR TRUSTEES. A TRUSTEE IS NOT ENTITLED TO CONTRIBUTION IF THE TRUSTEE WAS SUBSTANTIALLY MORE AT FAULT THAN ANOTHER TRUSTEE OR IF THE TRUSTEE COMMITTED THE BREACH OF TRUST IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES. A TRUSTEE WHO RECEIVED A BENEFIT FROM THE BREACH OF TRUST IS NOT ENTITLED TO CONTRIBUTION FROM ANOTHER TRUSTEE TO THE EXTENT OF THE BENEFIT RECEIVED.

14-11003. Damages in absence of breach

A. EXCEPT AS PROVIDED IN SECTION 14-7404, A TRUSTEE IS ACCOUNTABLE TO AN AFFECTED BENEFICIARY FOR ANY PROFIT MADE BY THE TRUSTEE ARISING FROM THE ADMINISTRATION OF THE TRUST, EVEN ABSENT A BREACH OF TRUST.

B. ABSENT A BREACH OF TRUST, A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR A LOSS OR DEPRECIATION IN THE VALUE OF TRUST PROPERTY OR FOR NOT HAVING MADE A PROFIT.

14-11004. Attorney fees and costs

A. A TRUSTEE OR A PERSON WHO IS NOMINATED AS A TRUSTEE IS ENTITLED TO REIMBURSEMENT FROM THE TRUST FOR THAT PERSON'S REASONABLE FEES, EXPENSES AND DISBURSEMENT, INCLUDING ATTORNEY FEES AND COSTS, THAT ARISE OUT OF AND THAT RELATE TO THE GOOD FAITH DEFENSE OR PROSECUTION OF A JUDICIAL OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING INVOLVING THE ADMINISTRATION OF THE TRUST, REGARDLESS OF WHETHER THE DEFENSE OR PROSECUTION IS SUCCESSFUL.

B. A COURT OR ARBITRATOR MAY ORDER THAT A PARTY'S REASONABLE FEES, EXPENSES AND DISBURSEMENTS PURSUANT TO SUBSECTION A BE PAID BY ANY OTHER PARTY OR THE TRUST THAT IS THE SUBJECT OF THE JUDICIAL PROCEEDING.

14-11005. Limitation of action against trustee

A. A BENEFICIARY MAY NOT COMMENCE A PROCEEDING AGAINST A TRUSTEE FOR BREACH OF TRUST MORE THAN ONE YEAR AFTER THE DATE THE BENEFICIARY OR A REPRESENTATIVE OF THE BENEFICIARY WAS SENT A REPORT THAT ADEQUATELY DISCLOSED THE EXISTENCE OF A POTENTIAL CLAIM FOR BREACH OF TRUST AND INFORMED THE BENEFICIARY OF THE TIME ALLOWED FOR COMMENCING A PROCEEDING.

B. A REPORT ADEQUATELY DISCLOSES THE EXISTENCE OF A POTENTIAL CLAIM FOR BREACH OF TRUST IF IT PROVIDES SUFFICIENT INFORMATION SO THAT THE BENEFICIARY OR REPRESENTATIVE KNOWS OF THE POTENTIAL CLAIM OR SHOULD HAVE INQUIRED INTO ITS EXISTENCE.

C. IF SUBSECTION A DOES NOT APPLY, A JUDICIAL PROCEEDING BY A BENEFICIARY AGAINST A TRUSTEE FOR BREACH OF TRUST MUST BE COMMENCED WITHIN TWO YEARS AFTER THE FIRST TO OCCUR OF:

1. THE REMOVAL, RESIGNATION OR DEATH OF THE TRUSTEE.
2. THE TERMINATION OF THE BENEFICIARY'S INTEREST IN THE TRUST.
3. THE TERMINATION OF THE TRUST.

14-11006. Reliance on trust instrument

A TRUSTEE WHO ACTS IN REASONABLE RELIANCE ON THE TERMS OF THE TRUST AS EXPRESSED IN THE TRUST INSTRUMENT IS NOT LIABLE TO A BENEFICIARY FOR A BREACH OF TRUST TO THE EXTENT THE BREACH RESULTED FROM THE RELIANCE.

14-11007. Event affecting administration or distribution

IF THE HAPPENING OF AN EVENT, INCLUDING MARRIAGE, DIVORCE, PERFORMANCE OF EDUCATIONAL REQUIREMENTS OR DEATH, AFFECTS THE ADMINISTRATION OR DISTRIBUTION OF A TRUST, A TRUSTEE WHO HAS EXERCISED REASONABLE CARE TO ASCERTAIN THE HAPPENING OF THE EVENT IS NOT LIABLE FOR A LOSS RESULTING FROM THE TRUSTEE'S LACK OF KNOWLEDGE.

14-11008. Exculpation of trustee

A. A TERM OF A TRUST RELIEVING A TRUSTEE OF LIABILITY FOR BREACH OF TRUST IS UNENFORCEABLE TO THE EXTENT THAT IT EITHER:

1. RELIEVES THE TRUSTEE OF LIABILITY FOR BREACH OF TRUST COMMITTED IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES.
2. WAS INSERTED AS THE RESULT OF AN ABUSE BY THE TRUSTEE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP TO THE SETTLOR.

1 B. AN EXCULPATORY TERM DRAFTED OR CAUSED TO BE DRAFTED BY THE TRUSTEE
2 IS INVALID AS AN ABUSE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP UNLESS THE
3 TRUSTEE PROVES THAT THE EXCULPATORY TERM IS FAIR UNDER THE CIRCUMSTANCES AND
4 THAT ITS EXISTENCE AND CONTENTS WERE ADEQUATELY COMMUNICATED TO THE SETTLOR.

5 C. SUBSECTION B DOES NOT APPLY TO AN IRREVOCABLE TRUST CREATED BEFORE
6 JANUARY 1, 2009 OR TO A REVOCABLE TRUST CREATED BEFORE JANUARY 1, 2009 THAT
7 IS NOT AMENDED ON OR AFTER JANUARY 1, 2009.

8 14-11009. Beneficiary's consent, release or ratification

9 A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR BREACH OF TRUST IF THE
10 BENEFICIARY CONSENTED TO THE CONDUCT CONSTITUTING THE BREACH, RELEASED THE
11 TRUSTEE FROM LIABILITY FOR THE BREACH OR RATIFIED THE TRANSACTION
12 CONSTITUTING THE BREACH, UNLESS EITHER:

13 1. THE CONSENT, RELEASE OR RATIFICATION OF THE BENEFICIARY WAS INDUCED
14 BY IMPROPER CONDUCT OF THE TRUSTEE.

15 2. AT THE TIME OF THE CONSENT, RELEASE OR RATIFICATION, THE
16 BENEFICIARY DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS
17 RELATING TO THE BREACH.

18 14-11010. Limitation on personal liability of trustee

19 A. EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT, A TRUSTEE IS NOT
20 PERSONALLY LIABLE ON A CONTRACT PROPERLY ENTERED INTO IN THE TRUSTEE'S
21 FIDUCIARY CAPACITY IN THE COURSE OF ADMINISTERING THE TRUST IF THE TRUSTEE IN
22 THE CONTRACT DISCLOSED THE FIDUCIARY CAPACITY.

23 B. A TRUSTEE IS PERSONALLY LIABLE FOR TORTS COMMITTED IN THE COURSE OF
24 ADMINISTERING A TRUST OR FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF
25 TRUST PROPERTY, INCLUDING LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW, ONLY
26 IF THE TRUSTEE IS PERSONALLY AT FAULT.

27 C. A CLAIM BASED ON A CONTRACT ENTERED INTO BY A TRUSTEE IN THE
28 TRUSTEE'S FIDUCIARY CAPACITY, ON AN OBLIGATION ARISING FROM OWNERSHIP OR
29 CONTROL OF TRUST PROPERTY OR ON A TORT COMMITTED IN THE COURSE OF
30 ADMINISTERING A TRUST MAY BE ASSERTED IN A JUDICIAL PROCEEDING AGAINST THE
31 TRUSTEE IN THE TRUSTEE'S FIDUCIARY CAPACITY, WHETHER OR NOT THE TRUSTEE IS
32 PERSONALLY LIABLE FOR THE CLAIM.

33 14-11011. Interest as general partner

34 A. EXCEPT TO THE EXTENT THAT PERSONAL LIABILITY IS IMPOSED IN THE
35 CONTRACT, A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IN A GENERAL
36 OR LIMITED PARTNERSHIP IS NOT PERSONALLY LIABLE ON A CONTRACT ENTERED INTO BY
37 THE PARTNERSHIP AFTER THE TRUST'S ACQUISITION OF THE INTEREST IF THE
38 FIDUCIARY CAPACITY WAS DISCLOSED IN THE CONTRACT OR IN A STATEMENT PREVIOUSLY
39 FILED PURSUANT TO THE UNIFORM PARTNERSHIP ACT OR THE UNIFORM LIMITED
40 PARTNERSHIP ACT.

41 B. A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IS NOT
42 PERSONALLY LIABLE FOR TORTS COMMITTED BY THE PARTNERSHIP OR FOR OBLIGATIONS
43 ARISING FROM OWNERSHIP OR CONTROL OF THE INTEREST UNLESS THE TRUSTEE IS
44 PERSONALLY AT FAULT.

14-11012. Protection of person dealing with trustee

A. A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH ASSISTS A TRUSTEE OR WHO IN GOOD FAITH AND FOR VALUE DEALS WITH A TRUSTEE, WITHOUT KNOWLEDGE THAT THE TRUSTEE IS EXCEEDING OR IMPROPERLY EXERCISING THE TRUSTEE'S POWERS, IS PROTECTED FROM LIABILITY AS IF THE TRUSTEE PROPERLY EXERCISED THE POWER.

B. A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH DEALS WITH A TRUSTEE IS NOT REQUIRED TO INQUIRE INTO THE EXTENT OF THE TRUSTEE'S POWERS OR THE PROPRIETY OF THEIR EXERCISE.

C. A PERSON WHO IN GOOD FAITH DELIVERS ASSETS TO A TRUSTEE NEED NOT ENSURE THEIR PROPER APPLICATION.

D. A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH ASSISTS A FORMER TRUSTEE OR WHO IN GOOD FAITH AND FOR VALUE DEALS WITH A FORMER TRUSTEE, WITHOUT KNOWLEDGE THAT THE TRUSTEESHIP HAS TERMINATED, IS PROTECTED FROM LIABILITY AS IF THE FORMER TRUSTEE WERE STILL A TRUSTEE.

E. COMPARABLE PROTECTIVE PROVISIONS OF OTHER LAWS RELATING TO COMMERCIAL TRANSACTIONS OR TRANSFER OF SECURITIES BY FIDUCIARIES PREVAIL OVER THE PROTECTION PROVIDED BY THIS SECTION.

14-11013. Certification of trust

A. INSTEAD OF FURNISHING A COPY OF THE TRUST INSTRUMENT TO A PERSON OTHER THAN A BENEFICIARY, THE TRUSTEE MAY FURNISH TO THE PERSON A CERTIFICATION OF TRUST CONTAINING THE FOLLOWING INFORMATION:

1. THAT THE TRUST EXISTS AND THE DATE THE TRUST INSTRUMENT WAS EXECUTED.

2. THE IDENTITY OF THE SETTLOR.

3. THE IDENTITY AND ADDRESS OF THE CURRENTLY ACTING TRUSTEE.

4. THE POWERS OF THE TRUSTEE.

5. THE REVOCABILITY OR IRREVOCABILITY OF THE TRUST AND THE IDENTITY OF ANY PERSON HOLDING A POWER TO REVOKE THE TRUST.

6. THE AUTHORITY OF COTRUSTEES TO SIGN OR OTHERWISE AUTHENTICATE AND WHETHER ALL OR LESS THAN ALL ARE REQUIRED IN ORDER TO EXERCISE POWERS OF THE TRUSTEE.

7. THE MANNER OF TAKING TITLE TO TRUST PROPERTY.

B. A CERTIFICATION OF TRUST MAY BE SIGNED OR OTHERWISE AUTHENTICATED BY ANY TRUSTEE.

C. A CERTIFICATION OF TRUST MUST STATE THAT THE TRUST HAS NOT BEEN REVOKED, MODIFIED OR AMENDED IN ANY MANNER THAT WOULD CAUSE THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION OF TRUST TO BE INCORRECT.

D. A CERTIFICATION OF TRUST NEED NOT CONTAIN THE DISPOSITIVE TERMS OF A TRUST.

E. A RECIPIENT OF A CERTIFICATION OF TRUST MAY REQUIRE THE TRUSTEE TO FURNISH COPIES OF THOSE EXCERPTS FROM THE ORIGINAL TRUST INSTRUMENT AND LATER AMENDMENTS THAT DESIGNATE THE TRUSTEE AND CONFER ON THE TRUSTEE THE POWER TO ACT IN THE PENDING TRANSACTION.

F. A PERSON WHO ACTS IN RELIANCE ON A CERTIFICATION OF TRUST WITHOUT KNOWLEDGE THAT THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION ARE INCORRECT IS NOT LIABLE TO ANY PERSON FOR SO ACTING AND MAY ASSUME WITHOUT INQUIRY THE EXISTENCE OF THE FACTS CONTAINED IN THE CERTIFICATION. KNOWLEDGE OF THE TERMS OF THE TRUST MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A COPY OF ALL OR PART OF THE TRUST INSTRUMENT IS HELD BY THE PERSON RELYING ON THE CERTIFICATION.

G. A PERSON WHO IN GOOD FAITH ENTERS INTO A TRANSACTION IN RELIANCE ON A CERTIFICATION OF TRUST MAY ENFORCE THE TRANSACTION AGAINST THE TRUST PROPERTY AS IF THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION WERE CORRECT.

H. A PERSON MAKING A DEMAND FOR THE TRUST INSTRUMENT IN ADDITION TO A CERTIFICATION OF TRUST OR EXCERPTS IS LIABLE FOR DAMAGES IF THE COURT DETERMINES THAT THE PERSON DID NOT ACT IN GOOD FAITH IN DEMANDING THE TRUST INSTRUMENT.

I. THIS SECTION DOES NOT LIMIT THE RIGHT OF A PERSON TO OBTAIN A COPY OF THE TRUST INSTRUMENT IN A JUDICIAL PROCEEDING CONCERNING THE TRUST.

14-11014. Total return trusts; definitions

A. A TRUSTEE, OTHER THAN AN INTERESTED TRUSTEE, OR IF TWO OR MORE PERSONS ARE ACTING AS TRUSTEE, A MAJORITY OF THE TRUSTEES WHO ARE NOT AN INTERESTED TRUSTEE, IN ITS SOLE DISCRETION AND WITHOUT THE APPROVAL OF THE PROBATE COURT MAY:

1. CONVERT AN INCOME TRUST TO A TOTAL RETURN UNITRUST.

2. RECONVERT A TOTAL RETURN UNITRUST TO AN INCOME TRUST.

3. CHANGE THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT OR THE METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST, OR BOTH, IF:

(a) THE TRUSTEE ADOPTS A WRITTEN POLICY FOR THE TRUST PROVIDING EITHER:

(i) IN THE CASE OF A TRUST BEING ADMINISTERED AS AN INCOME TRUST, FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE UNITRUST AMOUNTS RATHER THAN NET INCOME.

(ii) IN THE CASE OF A TRUST BEING ADMINISTERED AS A TOTAL RETURN UNITRUST, FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE NET INCOME RATHER THAN UNITRUST AMOUNTS.

(iii) THAT THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT OR THE METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST, OR BOTH, WILL BE CHANGED AS STATED IN THE POLICY.

(b) THE TRUSTEE SENDS WRITTEN NOTICE OF ITS INTENTION TO TAKE THIS ACTION, ALONG WITH COPIES OF THE WRITTEN POLICY AND THIS SECTION, TO:

(i) THE SETTLOR OF THE TRUST, IF LIVING.

(ii) ALL LIVING PERSONS WHO ARE CURRENTLY RECEIVING OR ELIGIBLE TO RECEIVE DISTRIBUTIONS OF INCOME OF THE TRUST.

(iii) WITHOUT REGARD TO THE EXERCISE OF ANY POWER OF APPOINTMENT, ALL LIVING PERSONS WHO WOULD RECEIVE PRINCIPAL OF THE TRUST IF THE TRUST WERE TO TERMINATE AT THE TIME OF THE GIVING OF THE NOTICE AND ALL LIVING PERSONS WHO

1 WOULD RECEIVE OR BE ELIGIBLE TO RECEIVE DISTRIBUTIONS OF INCOME OR PRINCIPAL
2 OF THE TRUST IF THE INTERESTS OF ALL OF THE BENEFICIARIES CURRENTLY ELIGIBLE
3 TO RECEIVE INCOME UNDER ITEM (ii) OF THIS SUBDIVISION WERE TO TERMINATE AT
4 THE TIME OF THE GIVING OF THE NOTICE.

5 (iv) ALL PERSONS ACTING AS ADVISER OR TRUST PROTECTOR OF THE TRUST.

6 (c) AT LEAST ONE PERSON RECEIVING NOTICE UNDER SUBDIVISION (b), ITEM
7 (ii) OR (iii) OF THIS SUBSECTION IS LEGALLY COMPETENT.

8 (d) NO PERSON RECEIVING NOTICE OBJECTS TO THE PROPOSED ACTION OF THE
9 TRUSTEE BY SUBMITTING A WRITTEN INSTRUMENT DELIVERED TO THE TRUSTEE WITHIN
10 THIRTY DAYS AFTER RECEIPT OF THE NOTICE.

11 B. IF THERE IS NO TRUSTEE OF THE TRUST OTHER THAN AN INTERESTED
12 TRUSTEE, THE INTERESTED TRUSTEE OR, IF TWO OR MORE PERSONS ARE ACTING AS
13 TRUSTEE AND ARE INTERESTED TRUSTEES, A MAJORITY OF INTERESTED TRUSTEES, IN
14 ITS SOLE DISCRETION AND WITHOUT THE APPROVAL OF THE PROBATE COURT MAY:

15 1. CONVERT AN INCOME TRUST TO A TOTAL RETURN UNITRUST.

16 2. RECONVERT A TOTAL RETURN UNITRUST TO AN INCOME TRUST.

17 3. CHANGE THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT OR THE
18 METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST, OR BOTH, IF:

19 (a) THE TRUSTEE ADOPTS A WRITTEN POLICY FOR THE TRUST PROVIDING
20 EITHER:

21 (i) IN THE CASE OF A TRUST BEING ADMINISTERED AS AN INCOME TRUST, THAT
22 FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE UNITRUST AMOUNTS RATHER THAN NET
23 INCOME.

24 (ii) IN THE CASE OF A TRUST BEING ADMINISTERED AS A TOTAL RETURN
25 UNITRUST, THAT FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE NET INCOME RATHER
26 THAN UNITRUST AMOUNTS.

27 (iii) THAT THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT OR THE
28 METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST, OR BOTH, WILL BE
29 CHANGED AS STATED IN THE POLICY.

30 (b) THE TRUSTEE APPOINTS A DISINTERESTED PERSON WHO, IN ITS SOLE
31 DISCRETION BUT ACTING IN A FIDUCIARY CAPACITY, DETERMINES FOR THE TRUSTEE:

32 (i) THE PERCENTAGE TO BE USED TO CALCULATE THE UNITRUST AMOUNT.

33 (ii) THE METHOD TO BE USED IN DETERMINING THE FAIR MARKET VALUE OF THE
34 TRUST.

35 (iii) WHICH ASSETS, IF ANY, ARE TO BE EXCLUDED IN DETERMINING THE
36 UNITRUST AMOUNT.

37 (c) THE TRUSTEE SENDS WRITTEN NOTICE OF ITS INTENTION TO TAKE SUCH
38 ACTION, ALONG WITH COPIES OF THE WRITTEN POLICY AND THIS SECTION, AND THE
39 DETERMINATIONS OF THE DISINTERESTED PERSON TO:

40 (i) THE SETTLOR OF THE TRUST, IF LIVING.

41 (ii) ALL LIVING PERSONS WHO ARE CURRENTLY RECEIVING OR ELIGIBLE TO
42 RECEIVE DISTRIBUTIONS OF INCOME OF THE TRUST.

43 (iii) WITHOUT REGARD TO THE EXERCISE OF ANY POWER OF APPOINTMENT, ALL
44 LIVING PERSONS WHO WOULD RECEIVE PRINCIPAL OF THE TRUST IF THE TRUST WERE TO
45 TERMINATE AT THE TIME OF THE GIVING OF THE NOTICE AND ALL LIVING PERSONS WHO

1 WOULD RECEIVE OR BE ELIGIBLE TO RECEIVE DISTRIBUTIONS OF INCOME OR PRINCIPAL
2 OF THE TRUST IF THE INTERESTS OF ALL OF THE BENEFICIARIES CURRENTLY ELIGIBLE
3 TO RECEIVE INCOME UNDER ITEM (ii) OF THIS SUBDIVISION WERE TO TERMINATE AT
4 THE TIME OF THE GIVING OF THE NOTICE.

5 (iv) ALL PERSONS ACTING AS ADVISER OR PROTECTOR OF THE TRUST.

6 (d) AT LEAST ONE PERSON RECEIVING NOTICE UNDER SUBDIVISION (c), ITEM
7 (ii) OR (iii) OF THIS SUBSECTION IS LEGALLY COMPETENT.

8 (e) NO PERSON RECEIVING NOTICE OBJECTS TO THE PROPOSED ACTION OR THE
9 DETERMINATIONS OF THE DISINTERESTED PERSON BY SUBMITTING A WRITTEN INSTRUMENT
10 DELIVERED TO THE TRUSTEE WITHIN THIRTY DAYS AFTER RECEIPT OF THE NOTICE.

11 C. IF ANY TRUSTEE WISHES TO CONVERT AN INCOME TRUST TO A TOTAL RETURN
12 UNITRUST, RECONVERT A TOTAL RETURN UNITRUST TO AN INCOME TRUST OR CHANGE THE
13 PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT OR THE METHOD USED TO
14 DETERMINE THE FAIR MARKET VALUE OF THE TRUST, OR BOTH, BUT DOES NOT HAVE THE
15 ABILITY TO OR ELECTS NOT TO DO IT PURSUANT TO SUBSECTION A OR B OF THIS
16 SECTION, THE TRUSTEE MAY PETITION THE PROBATE COURT FOR AN ORDER AS THE
17 TRUSTEE DEEMS APPROPRIATE. IF THERE IS ONLY ONE TRUSTEE OF SUCH A TRUST AND
18 THAT TRUSTEE IS AN INTERESTED TRUSTEE OR IF THERE ARE TWO OR MORE TRUSTEES OF
19 SUCH A TRUST AND A MAJORITY OF THEM ARE INTERESTED TRUSTEES, THE COURT, IN
20 ITS DISCRETION OR ON PETITION OF THE TRUSTEE OR TRUSTEES OR OF ANY PERSON
21 INTERESTED IN THE TRUST, MAY APPOINT A DISINTERESTED PERSON WHO, ACTING IN A
22 FIDUCIARY CAPACITY, SHALL PRESENT INFORMATION TO THE COURT NECESSARY TO
23 ENABLE THE COURT TO MAKE ITS DETERMINATIONS.

24 D. THE FAIR MARKET VALUE OF THE TRUST SHALL BE DETERMINED AT LEAST
25 ANNUALLY, USING A VALUATION DATE OR DATES OR AVERAGES OF VALUATION DATES AS
26 ARE DEEMED APPROPRIATE. ASSETS FOR WHICH A FAIR MARKET VALUE CANNOT BE
27 READILY ASCERTAINED SHALL BE VALUED USING VALUATION METHODS AS ARE DEEMED
28 REASONABLE AND APPROPRIATE. ASSETS USED BY A TRUST BENEFICIARY, SUCH AS A
29 RESIDENCE PROPERTY OR TANGIBLE PERSONAL PROPERTY, MAY BE EXCLUDED FROM FAIR
30 MARKET VALUE FOR COMPUTING THE UNITRUST AMOUNT.

31 E. THE PERCENTAGE TO BE USED IN DETERMINING THE UNITRUST AMOUNT SHALL
32 BE A REASONABLE CURRENT RETURN FROM THE TRUST, BUT NOT LESS THAN THREE PER
33 CENT OR MORE THAN FIVE PER CENT, TAKING INTO ACCOUNT THE INTENTIONS OF THE
34 SETTLOR OF THE TRUST AS EXPRESSED IN THE GOVERNING INSTRUMENT, THE NEEDS OF
35 THE BENEFICIARIES, GENERAL ECONOMIC CONDITIONS, PROJECTED CURRENT EARNINGS
36 AND APPRECIATION FOR THE TRUST, AND PROJECTED INFLATION AND ITS IMPACT ON THE
37 TRUST.

38 F. A TRUSTEE MAY ACT PURSUANT TO SUBSECTION A OR B OF THIS SECTION
39 WITH RESPECT TO A TRUST FOR WHICH BOTH INCOME AND PRINCIPAL HAVE BEEN
40 PERMANENTLY SET ASIDE FOR CHARITABLE PURPOSES UNDER THE GOVERNING INSTRUMENT
41 AND FOR WHICH A FEDERAL ESTATE OR GIFT TAX DEDUCTION HAS BEEN TAKEN, PROVIDED
42 THAT:

43 1. INSTEAD OF SENDING WRITTEN NOTICE TO THE PERSONS DESCRIBED IN
44 SUBSECTION A, PARAGRAPH 3, SUBDIVISION (b), ITEMS (ii) AND (iii) OF THIS
45 SECTION OR PURSUANT TO SUBSECTION B, PARAGRAPH 3, SUBDIVISION (c), ITEMS (ii)

1 AND (iii) OF THIS SECTION, AS THE CASE MAY BE, THE TRUSTEE SHALL SEND THE
2 WRITTEN NOTICE TO THE NAMED CHARITY OR CHARITIES THEN ENTITLED TO RECEIVE
3 INCOME OF THE TRUST AND, IF NO NAMED CHARITY OR CHARITIES ARE ENTITLED TO
4 RECEIVE ALL OF THAT INCOME, TO THE ATTORNEY GENERAL OF THIS STATE.

5 2. SUBSECTION A, PARAGRAPH 3, SUBDIVISION (c) OF THIS SECTION OR
6 SUBSECTION B, PARAGRAPH 3, SUBDIVISION (d) OF THIS SECTION, AS THE CASE MAY
7 BE, DOES NOT APPLY TO THAT ACTION.

8 3. IN EACH TAXABLE YEAR, THE TRUSTEE MUST DISTRIBUTE THE GREATER OF
9 THE UNITRUST AMOUNT AND THE AMOUNT REQUIRED BY SECTION 4942 OF THE INTERNAL
10 REVENUE CODE.

11 G. FOLLOWING THE CONVERSION OF AN INCOME TRUST TO A TOTAL RETURN
12 UNITRUST, THE TRUSTEE:

13 1. SHALL CONSIDER THE UNITRUST AMOUNT AS PAID FROM NET ACCOUNTING
14 INCOME DETERMINED AS IF THE TRUST WERE NOT A UNITRUST.

15 2. SHALL THEN CONSIDER THE UNITRUST AMOUNT AS PAID FROM ORDINARY
16 INCOME NOT ALLOCABLE TO NET ACCOUNTING INCOME.

17 3. AFTER CALCULATING THE TRUST'S CAPITAL GAIN NET INCOME DESCRIBED IN
18 SECTION 1222(9) OF THE INTERNAL REVENUE CODE, MAY CONSIDER THE UNITRUST
19 AMOUNT AS PAID FROM NET SHORT-TERM CAPITAL GAIN DESCRIBED IN SECTION 1222(5)
20 OF THE INTERNAL REVENUE CODE AND THEN FROM NET LONG-TERM CAPITAL GAIN
21 DESCRIBED IN SECTION 1222(7) OF THE INTERNAL REVENUE CODE.

22 4. SHALL THEN CONSIDER THE UNITRUST AMOUNT AS COMING FROM THE
23 PRINCIPAL OF THE TRUST.

24 H. IN ADMINISTERING A TOTAL RETURN UNITRUST, THE TRUSTEE, IN ITS SOLE
25 DISCRETION BUT SUBJECT TO THE PROVISIONS OF THE GOVERNING INSTRUMENT, MAY
26 DETERMINE:

27 1. THE EFFECTIVE DATE OF THE CONVERSION.

28 2. THE TIMING OF DISTRIBUTIONS, INCLUDING PROVISIONS FOR PRORATING A
29 DISTRIBUTION FOR A SHORT YEAR IN WHICH A BENEFICIARY'S RIGHT TO PAYMENTS
30 COMMENCES OR CEASES.

31 3. WHETHER DISTRIBUTIONS ARE TO BE MADE IN CASH OR IN KIND OR PARTLY
32 IN CASH AND PARTLY IN KIND.

33 4. IF THE TRUST IS RECONVERTED TO AN INCOME TRUST, THE EFFECTIVE DATE
34 OF THE RECONVERSION.

35 5. ANY OTHER ADMINISTRATIVE ISSUES AS MAY BE NECESSARY OR APPROPRIATE
36 TO CARRY OUT THE PURPOSES OF THIS SECTION.

37 I. CONVERSION TO A TOTAL RETURN UNITRUST UNDER THIS SECTION DOES NOT
38 AFFECT ANY OTHER PROVISION OF THE GOVERNING INSTRUMENT, IF ANY, REGARDING
39 DISTRIBUTIONS OF PRINCIPAL.

40 J. NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY, IN THE
41 CASE OF A TRUST FOR WHICH A MARITAL DEDUCTION HAS BEEN TAKEN FOR FEDERAL TAX
42 PURPOSES UNDER SECTION 2056 OR 2523 OF THE INTERNAL REVENUE CODE, THE SPOUSE
43 OTHERWISE ENTITLED TO RECEIVE THE NET INCOME OF THE TRUST HAS THE RIGHT, BY
44 WRITTEN INSTRUMENT DELIVERED TO THE TRUSTEE, TO PROHIBIT CONVERSION TO A

1 TOTAL RETURN UNITRUST AND TO COMPEL THE RECONVERSION DURING THAT SPOUSE'S
2 LIFETIME OF THE TRUST FROM A TOTAL RETURN UNITRUST TO AN INCOME TRUST.

3 K. THIS SECTION PERTAINS TO THE ADMINISTRATION OF A TRUST AND IS
4 AVAILABLE TO ANY TRUST THAT IS ADMINISTERED IN THIS STATE UNDER ARIZONA LAW
5 OR TO ANY TRUST, REGARDLESS OF ITS PLACE OF ADMINISTRATION, WHOSE GOVERNING
6 INSTRUMENT PROVIDES THAT ARIZONA LAW GOVERNS MATTERS OF CONSTRUCTION OR
7 ADMINISTRATION UNLESS:

8 1. THE GOVERNING INSTRUMENT REFLECTS AN INTENTION THAT THE CURRENT
9 BENEFICIARY OR BENEFICIARIES ARE TO RECEIVE AN AMOUNT OTHER THAN A REASONABLE
10 CURRENT RETURN FROM THE TRUST.

11 2. THE TRUST IS A POOLED INCOME FUND DESCRIBED IN SECTION 642(c)(5) OF
12 THE INTERNAL REVENUE CODE OR A CHARITABLE-REMAINDER TRUST DESCRIBED IN
13 SECTION 664(d) OF THE INTERNAL REVENUE CODE.

14 3. THE GOVERNING INSTRUMENT EXPRESSLY PROHIBITS USE OF THIS SECTION BY
15 SPECIFIC REFERENCE TO THIS SECTION OR EXPRESSLY STATES THE SETTLOR'S INTENT
16 THAT NET INCOME NOT BE CALCULATED AS A UNITRUST AMOUNT. A PROVISION IN THE
17 GOVERNING INSTRUMENT THAT "THE PROVISIONS OF ARIZONA REVISED STATUTES,
18 SECTION 14-11014, AS AMENDED, OR ANY CORRESPONDING PROVISION OF FUTURE LAW,
19 SHALL NOT BE USED IN THE ADMINISTRATION OF THIS TRUST" OR "MY TRUSTEE SHALL
20 NOT DETERMINE THE DISTRIBUTIONS TO THE INCOME BENEFICIARY AS A UNITRUST
21 AMOUNT" OR SIMILAR WORDS REFLECTING SUCH INTENT SHALL BE SUFFICIENT TO
22 PRECLUDE THE USE OF THIS SECTION.

23 L. ANY TRUSTEE OR DISINTERESTED PERSON WHO IN GOOD FAITH TAKES OR
24 FAILS TO TAKE ANY ACTION UNDER THIS SECTION IS NOT LIABLE TO ANY PERSON
25 AFFECTED BY THAT ACTION OR INACTION, REGARDLESS OF WHETHER THE PERSON
26 RECEIVED WRITTEN NOTICE AS PRESCRIBED IN THIS SECTION AND REGARDLESS OF
27 WHETHER THE PERSON WAS UNDER A LEGAL DISABILITY AT THE TIME OF THE DELIVERY
28 OF THE NOTICE. THE PERSON'S EXCLUSIVE REMEDY IS TO OBTAIN A COURT ORDER
29 DIRECTING THE TRUSTEE TO CONVERT AN INCOME TRUST TO A TOTAL RETURN UNITRUST,
30 TO RECONVERT FROM A TOTAL RETURN UNITRUST TO AN INCOME TRUST OR TO CHANGE THE
31 PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT.

32 M. THIS SECTION IS AVAILABLE TO TRUSTS IN EXISTENCE ON OCTOBER 1, 2008
33 OR CREATED AFTER THAT DATE.

34 N. FOR THE PURPOSES OF THIS SECTION:

35 1. "DISINTERESTED PERSON" MEANS A PERSON WHO IS NOT A RELATED OR
36 SUBORDINATE PARTY PURSUANT TO SECTION 672(c) OF THE INTERNAL REVENUE CODE
37 WITH RESPECT TO THE PERSON THEN ACTING AS TRUSTEE OF THE TRUST AND EXCLUDES
38 THE SETTLOR OF THE TRUST AND ANY INTERESTED TRUSTEE.

39 2. "INCOME TRUST" MEANS A TRUST THAT IS CREATED BY EITHER AN INTER
40 VIVOS OR A TESTAMENTARY INSTRUMENT AND THAT DIRECTS OR PERMITS THE TRUSTEE TO
41 DISTRIBUTE THE NET INCOME OF THE TRUST TO ONE OR MORE PERSONS, EITHER IN
42 REQUIRED AMOUNTS OR PROPORTIONS, OR IN AMOUNTS OR PROPORTIONS DETERMINED BY
43 THE TRUSTEE AND REGARDLESS OF WHETHER THE TRUST DIRECTS OR PERMITS THE
44 TRUSTEE TO DISTRIBUTE THE PRINCIPAL OF THE TRUST TO ONE OR MORE OF THESE
45 PERSONS.

3. "INTERESTED DISTRIBUTE" MEANS A PERSON TO WHOM DISTRIBUTIONS OF INCOME OR PRINCIPAL CAN CURRENTLY BE MADE WHO HAS THE POWER TO REMOVE THE EXISTING TRUSTEE AND DESIGNATE AS SUCCESSOR A PERSON WHO MAY BE A RELATED OR SUBORDINATE PARTY PURSUANT TO SECTION 672(c) OF THE INTERNAL REVENUE CODE WITH RESPECT TO THAT DISTRIBUTE.

4. "INTERESTED TRUSTEE" MEANS:

(a) AN INDIVIDUAL TRUSTEE TO WHOM THE NET INCOME OR PRINCIPAL OF THE TRUST CAN CURRENTLY BE DISTRIBUTED OR WOULD BE DISTRIBUTED IF THE TRUST WERE THEN TO TERMINATE AND BE DISTRIBUTED.

(b) ANY TRUSTEE WHO MAY BE REMOVED AND REPLACED BY AN INTERESTED DISTRIBUTE.

(c) AN INDIVIDUAL TRUSTEE WHOSE LEGAL OBLIGATION TO SUPPORT A BENEFICIARY MAY BE SATISFIED BY DISTRIBUTIONS OF INCOME AND PRINCIPAL OF THE TRUST.

5. "TOTAL RETURN UNITRUST" MEANS AN INCOME TRUST THAT HAS BEEN CONVERTED UNDER AND MEETS THE REQUIREMENTS OF THIS SECTION.

6. "TRUSTEE" MEANS ANY PERSON ACTING AS TRUSTEE OF THE TRUST, UNLESS EXPRESSLY NOTED OTHERWISE, WHETHER ACTING IN THAT PERSON'S DISCRETION OR ON THE DIRECTION OF ONE OR MORE PERSONS ACTING IN A FIDUCIARY CAPACITY.

7. "UNITRUST AMOUNT" MEANS AN AMOUNT COMPUTED AS A PERCENTAGE OF THE FAIR MARKET VALUE OF THE TRUST.

ARTICLE 11. MISCELLANEOUS PROVISIONS

14-11101. Electronic records and signatures

THE PROVISIONS OF THIS CHAPTER GOVERNING THE LEGAL EFFECT, VALIDITY OR ENFORCEABILITY OF ELECTRONIC RECORDS OR ELECTRONIC SIGNATURES, AND OF CONTRACTS FORMED OR PERFORMED WITH THE USE OF SUCH RECORDS OR SIGNATURES, CONFORM TO THE REQUIREMENTS OF SECTION 102 OF THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (15 UNITED STATES CODE SECTION 7002) AND SUPERSEDE, MODIFY AND LIMIT THE REQUIREMENTS OF THAT ACT.

14-11102. Severability clause

IF ANY PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS CHAPTER THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS CHAPTER ARE SEVERABLE.

Sec. 17. Section 46-456, Arizona Revised Statutes, is amended to read:

46-456. Duty to an incapacitated or vulnerable adult; financial exploitation; civil and criminal penalties; exceptions; definitions

A. A person who is in a position of trust and confidence to an incapacitated or vulnerable adult shall act for the benefit of that person to the same extent as a trustee pursuant to title 14, chapter 7, ~~article 3~~.

B. A person who is in a position of trust and confidence and who by intimidation or deception knowingly takes control, title, use or management of an incapacitated or vulnerable adult's asset or property with the intent

1 to permanently deprive that person of the asset or property is guilty of
2 theft as provided in section 13-1802.

3 C. A person who violates subsection A or B of this section is subject
4 to damages in a civil action brought by or on behalf of an incapacitated or
5 vulnerable adult that equal up to three times the amount of the monetary
6 damages.

7 D. A person who violates subsection A or B of this section forfeits
8 all benefits with respect to the estate of the deceased, incapacitated or
9 vulnerable adult, including an intestate share, an elective share, an omitted
10 spouse's share, an omitted child's share, a homestead allowance, an exempt
11 property allowance and a family allowance. If the incapacitated or
12 vulnerable adult died intestate, the decedent's intestate estate passes as if
13 the person who committed the violation disclaimed that person's intestate
14 share.

15 E. ~~The provisions of~~ Section 46-455, subsections F, G, H, I, K, L, M
16 and P also apply to civil violations of this section.

17 F. Subsections A, C, D and E of this section do not apply to an agent
18 that is any of the following:

19 1. A bank, financial institution or escrow agent licensed or certified
20 pursuant to title 6.

21 2. A securities dealer or salesman registered pursuant to title 44,
22 chapter 12, article 9.

23 3. An insurer, including a title insurer, authorized and regulated
24 pursuant to title 20.

25 G. For the purposes of this section:

26 1. "Deception" means that a person deceives an incapacitated or
27 vulnerable adult by knowingly doing any of the following:

28 (a) Creating or confirming a false impression in an incapacitated or
29 vulnerable adult's mind.

30 (b) Failing to correct a false impression that the person is
31 responsible for creating or confirming in an incapacitated or vulnerable
32 adult's mind.

33 (c) Making a promise to an incapacitated or vulnerable adult that the
34 person does not intend to perform or that the person knows will not or cannot
35 be performed. A person's failure to perform a promise is not by itself
36 sufficient proof that the person did not intend to perform the promise.

37 (d) Misrepresenting or concealing a material fact that relates to the
38 terms of a contract or an agreement that the person enters into with the
39 incapacitated or vulnerable adult or that relates to the existing or
40 preexisting condition of any of the property involved in a contract or an
41 agreement.

42 (e) Using any material misrepresentation, false pretense or false
43 promise to induce, encourage or solicit an incapacitated or vulnerable adult
44 to enter into a contract or an agreement.

1 2. "Intimidation" includes threatening to deprive an incapacitated or
2 vulnerable adult of food, nutrition, shelter or necessary medication or
3 medical treatment.

4 3. "Position of trust and confidence" means that a person is any of
5 the following:

6 (a) One who has assumed a duty to provide care to the incapacitated or
7 vulnerable adult.

8 (b) A joint tenant or a tenant in common with an incapacitated or
9 vulnerable adult.

10 (c) One who is in a fiduciary relationship with an incapacitated or
11 vulnerable adult including a de facto guardian or de facto conservator.

12 Sec. 18. Application to existing relationships

13 A. Except as otherwise provided in this act, beginning on January 1,
14 2009:

15 1. This act applies to all trusts created before, on or after January
16 1, 2009.

17 2. This act applies to all judicial proceedings concerning trusts
18 commenced on or after January 1, 2009.

19 3. This act applies to judicial proceedings concerning trusts
20 commenced before January 1, 2009, unless the court finds that application of
21 a particular provision of this act would substantially interfere with the
22 effective conduct of the judicial proceedings or prejudice the rights of the
23 parties, in which case the particular provision of this act does not apply
24 and the superseded law applies.

25 4. Any rule of construction or presumption provided in this act
26 applies to trust instruments executed before January 1, 2009, unless there is
27 a clear indication of a contrary intent in the terms of the trust.

28 5. An act done before January 1, 2009 is not affected by this act.

29 B. If a right is acquired, extinguished or barred on the expiration of
30 a prescribed period that has commenced to run under any other statute before
31 January 1, 2009, that statute continues to apply to the right even if it has
32 been repealed or superseded.

33 Sec. 19. Effective date

34 This act is effective from and after December 31, 2008.